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1 Dated: Sept. 20, 2021

DocuSigned by:  
Ali Shahrokhi  
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3 **Ali Shahrokhi**  
4 Appellant, ALI SHAHROKHI

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8 **HISTORY of the CASE**

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SHAHROKHI'S fundamental rights and parental rights were violated on July 11, 2019 by a bottom feeder, criminal individual who happens to be a presiding judge in Department N, family court, out of retaliation for going on a writ against this criminal.

Court of Appeals COA-79336 issued directives to the trial court which were completely ignored by Harter and he refused to establish temporary visitations even though he was ORDERED to do so.

Parental rights are fundamental rights associated with 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 14<sup>th</sup> Amendment rights which means that ***judges have on discretion on constitutional matters***. Familial association is well recognized and acknowledged all through federal courts and U.S. Supreme Court.

SHAHROKHI has exhausted all his options in the trial court to establish temporary visitation with his minor son and he has been unsuccessful. The trial courts ignore the constitutional rights of SHAHROKHI and his minor son related to familial association.

SHAHROKHI can not raise the same issues over and over in the trial court as the justices have suggested, in fact the opposing party, her attorneys and the criminal Harter have gone as far as threatening to name SHAHROKHI as a "vexatious litigant" while SHAHROKHI is raising his federal rights in a state court.

1 Such is just absolutely ridiculous, so the notion of establishing temporary visitation  
2 in trial court by the justices of Supreme Court is irrational and makes no sense  
3 what so ever as it has been tried not once, not twice, not three times but a whole  
4 bunch of times. SHAHROKHI has been raising these issues for over two years now  
5 and that's why SHAHROKHI is on appeal.

6 SHAHROKHI has exhausted all his options and remedies in the trial court and  
7 absolutely no logical reason exists to repeat the same process, which has failed  
8 every single time because *the district court ignores the U.S. Constitution!*

9 SHAHROKHI has exhausted all his remedies in the trial court. SHAHROKHI has  
10 NO LEGAL REMEDY at this point, in the trial courts, until the Supreme Court of  
11 Nevada decides the merits of constitutional matters/issues raised by SHAHROKHI.

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13 **HISTORY OF SHAHROKHI TRYING TO ESTABLISH TEMPORARY**  
14 **VISITATION IN TRIAL COURT, RAISING CONSTITUTIONAL ISSUES**

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16 1- On Nov. 12, 2019, SHAHROKHI filed an Emergency Writ of Mandamus  
17 (COA-79992) to establish his custody right, the petition was DENIED;  
18 2- On Dec. 10, 2019, SHAHROKHI filed a motion to have his custody rights  
19 restored, which was completely IGNORED by Criminal Harter;  
20 3- On Dec. 30 2019 Fred Page, Esq. filed an Emergency Writ of Mandamus  
21 (COA-80277) to establish custody rights, the petition was DENIED;  
22 4- On May 12, 2019 Fred Page, Esq. on a telephonic hearing again tried to  
23 restore custody rights, Criminal Harter completely IGNORED it;  
24 5- On May 21, 2019 SHAHROKHI filed an Emergency Writ of Mandamus  
25 (COA-80447) trying to restore his custody rights, the petition was DENIED;  
26 6- On July 13, 2019, SHAHROKHI filed an Emergency Writ of Mandamus  
27 (COA-81218), again trying to restore custody rights, but the petition was  
28 DENIED;

1 SHAHROKHI has completely exhausted his options in the trial court to restore his  
2 custodial rights that are 100% protected and guaranteed by U.S. Constitution.

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5 **MEMORANDUM OF POINTS AND AUTHORITIES**  
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7 **Binding Precedent:** SHAHROKHI in his motion to establish immediate  
8 temporary visitation *de novo* cited several U.S. Supreme Court decisions in regards  
9 to parental rights which are 100% “mandatory” and “binding” authority over  
10 Nevada Supreme Court which this court has completely ignored. Decisions by  
11 U.S. Supreme Court are precedent binding on all Nevada Courts and the highest  
12 court in Nevada “must” consider U.S. Supreme Court precedent when determining  
13 cases that cite and raise such authority as SHAHROKHI has done in his motion.  
14 Issuing decisions/opinions where the relevant law is already well-established runs  
15 the risk of creating inconsistencies. [See Redmon, 302 GA. 763, 809 S. E. 2d, at  
16 472].

17 Nevada Supreme Court ignoring U.S. Supreme Case binding authority cited  
18 by SHAHROKHI in his motion is in direct violation of U.S. Constitution. Nevada  
19 Supreme Court should be precedent-bound on parental rights from the U.S.  
20 Supreme Court.

21 The first Amendment protects ‘family relationships,’ this right was first  
22 identified in Roberts v. United States Jaycees, which indicated that protecting  
23 intimate relations “from unwarranted state interference” was necessary to  
24 safeguard the ability independently to define one’s identity that is central to any  
25 concept of liberty. [468 U.S. 609, 619, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984)]

26 This Court has IGNORED binding precedent cited by SHAHROKHI in  
27 Quillion v. Walcott 434 U.S. 246 (1978) which states....

28 “[i]f a State were to attempt to force the breakup of a natural family,

1 over the objections of the parents and their children, without some showing  
2 of **unfitness** and for the sole reason that to do so was thought to be in the  
3 children's best interest."

4 This Court has ignored binding precedent cited by SHAHROKHI in  
5 Parham v. J.R., 442 U.S. 584 (1979) which states....

6 "Simply because the decision of a parent is not agreeable to a child,  
7 or because it involves risks, **does not automatically transfer the power to**  
8 **make that decision from the parents to some agency or officer of the**  
9 **state.**"

10 This Court has ignored binding precedent cited by SHAHROKHI in  
11 Santosky v. Kramer, 455 U.S. 745 (1982) which states ....

12 "The fundamental liberty interest of natural parents in the care custody, and  
13 management of their child is protected by the Fourteenth Amendment, and  
14 does not evaporate simply because they have not been model parents or have  
15 lost temporary custody of their child to the State."

16 This Court has ignored binding precedent cited by SHAHROKHI in Reno v.  
17 Flores, 507 U.S. 292 (1993) which states....

18 **"the best interests of the child" is not the legal standard that governs**  
19 **parents' or guardians' exercise of their custody:** So long as certain minimum  
20 requirements of child care are met, the interests of the child may be  
21 subordinated to the interests of other children, or indeed even to the interests  
22 of the parents or guardians themselves. See, e. g., R. C. N. v. State, 141 Ga.  
23 App. 490, 491, 233 S. E. 2d 866, 867 (1977).

24 This Court has ignored binding precedent cited by SHAHROKHI in Troxel v.  
25 Granville, 530 U.S. 57 (2000) which states....

26 "The liberty interest at issue in this case-the interest of parents in the care,  
27 custody, and control of their children is perhaps the oldest of the  
28 **fundamental liberty interests recognized by this Court.** As we have  
explained, the Due Process Clause **does not permit a State to infringe on the**  
**fundamental right of parents to make child rearing decisions** simply because  
a **state judge** believes a "better" decision could be made."

1 All Mandatory binding authorities above cited by SHAHROKHI and ignored  
2 by Nevada Courts are associated with U.S. Constitutional rights and guaranteed by  
3 those rights, which means *state judicial officers have no discretion! Period.*

4  
5 SHAHROKHI can care less about what a state judge thinks or says about  
6 SHAHROKHI'S parental rights and custody rights unless the state judge has :

7 **(A) declared SHAHROKHI "unfit"; or**

8 **(B) proved on the record that SHAHROKHI "neglected"**  
9 **or "abused" the minor child.**

10 The burden is on the state to prove as much, but this has NEVER taken place  
11 in the entire custody dispute in this case. 14<sup>th</sup> Amendment equal protection  
12 basically guarantees equal custody between both parents and SHAHROKHI is legally  
13 entitled to his 50/50 physical custody and legal custody as a matter of law and no  
14 state court judge has any discretion on such rights over SHAHROKHI.

15 SHAHROKHI demands this court immediately re-store his 50% custody rights  
16 in physical custody and legal custody and trial courts judges have ZERO discretion  
17 in regards to constitutional rights. State of Nevada is destroying and weakening my  
18 familial bonds with my son without any rights to infringe upon our relationship and  
19 just because another parent has come to the court, brought fraud upon the court and  
20 asking the court to sever such relationships so her and her boyfriend can benefit  
21 from such severance.

22  
23 The *parens patria* interest favors preservation, not severance, of natural  
24 familial bonds. (See Santosky v. Kramer, 455 U.S. 745)

25 U.S. Supreme Court has stated that freedom of choice in matters of a family  
26 life is a fundamental liberty interest protected by the 14<sup>th</sup> Amendment. I want to  
27 repeat that again, *judges have no discretion on constitutional rights!*



**DISTRICT COURT HAS DECIDED SHAHROKHI'S ARGUMENTS  
ARE APPELLATE MATTERS.**

Criminal Harter, issued a minute order on Sept. 29, 2020, stating that SHAHROKHI'S fundamental rights raised at pre-trial, trial are all **APPELLATTE MATTERS**, as such there is absolutely no reason for Shahrokhi to go back to the district court, raising the same issues when they have ignored all of it, hence the fact I am on appeal and asking this court to protect my constitutional rights given to me by nature and god.

**MOTION FOR CLARIFICATION**

State of Nevada continues to violate SHAHROKHI'S fundamental rights to have association with his minor child, the state has been violating SHAHROKHI'S 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 14<sup>th</sup> Amendment rights to familial association, the right to raise his child as Shahrokhi wishes to, the right to care for his child as SHAHROKHI wishes to, the right to teach religion to his child as SHAHROKHI wishes to, the right to have a private speech with his child as SHAHROKHI wishes to, the right to make decisions about his child as SHAHROKHI wishes to. The state cannot interfere with SHAHROKHI'S rights without any showing of unfitness. That burden is on the state and they have NEVER declared SHAHROKHI unfit or set a fitness hearing ever and the record is clear, (see Stanley v. Illinois, 405 U.S. 645 (1972). The Court declared unconstitutional statute that deprived unmarried fathers of the care and custody of their children on the death of the mother without any showing of the father's unfitness).

In Duchesne v. Sugarman, 566 F.2d 817,825 (2<sup>nd</sup> Cir.1977), the Second Circuit held the right of the family to remain together without the coercive

1 interference of the awesome power of the state encompasses the reciprocal rights  
2 of both parent and child. The court explained that children have constitutional  
3 rights to **AVOID** dislocation from the emotional attachments that derive from the  
4 intimacy of daily association with the parent.

5 In *Eisenstadt v Baird*, 405 U.S. 438 (1972), the Court reasoned that because  
6 the material privacy recognized in *Griswold* protects two independent and distinct  
7 individuals, this protection should apply equally to a single person. Accordingly,  
8 the Court invalidated a Massachusetts statute that prohibited the distribution of  
9 contraceptives to unmarried persons.

10 This Court is creating a situation for SHAHROKHI to have to take things in his  
11 own hand and protect his own constitutional parental rights as this court continues  
12 to violate them. In *Santosky v. Kramer*, 455 U.S. 745 (1982), the Court declared  
13 unconstitutional a New York statute that authorized termination of parental rights  
14 based on a preponderance of the evidence. **Santosky is the first Supreme Court**  
15 **case to hold that even after parents are found "unfit" in a contested court**  
16 **proceedings, they retain constitutionally protected parental rights.**

17  
18 SHAHROKHI is asking this court to "clarify" in an ORDER.....is Nevada  
19 Supreme Court ignoring the MANDATORY BINDING AUTHORITY of  
20 decisions made by the U.S. Supreme Court? which have precedential authority  
21 over state statutes!

22 Is Nevada's Supreme Court stating the state's unconstitutional custody  
23 statutes that is solely based on a child's "best interests" is a precedent authority  
24 over federal laws and constitutional rights?

25 If that is the case, then SHAHROKHI demands such order to be in writing so  
26 SHAHROKHI can immediately exercise his rights in the Federal courts and bring an  
27 INJUNCTION against Nevada Supreme Court.  
28



1 NO MAN IN THIS COUNTRY IS SO HIGH THAT HE IS ABOVE THE LAW.

2 NO OFFICER OF THE LAW MAY SET THE LAW AT DEFIANCE WITH IMPUNITY.

3 [*Butz v. Economou* 438 U.S. 478, 506, (1978)]. **The buck stops here!!**

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5 SUMMARY & CONCLUSION—

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7 Summary: SHAHROKHI respectfully requests that this Court *GRANT* this  
8 Request for Reconsideration to immediately restore SHAHROKHI 50% of his  
9 custodial rights (physical and legal) as mandated and protected by U.S.  
10 Constitution.

11 SHAHROKHI has constitutional rights to raise his minor child as he chooses.  
12 The Due Process Clause of the Fourteenth Amendment protects parental  
13 fundamental liberty, incorporating the right to marry, establish a home, and bring  
14 up children.

15 In *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925), relying on *Meyer*, the  
16 Court struck down an Oregon statute requiring children to attend public schools.  
17 This statute interfered with the right of parents to select private or parochial  
18 schools for their children and that it lacked a reasonable relation to any purpose  
19 within the competency of the state. The same goes for SHAHROKHI. State of  
20 Nevada's infringement on SHAHROKHI's parental rights lacks a reasonable relation  
21 to any purpose within the competency of the state.

22  
23 SHAHROKHI has exhausted all his legal remedies for custody (physical and  
24 legal) in the lower court and this court has jurisdiction to decide this motion de  
25 novo. Under *de novo* review, the appellate court uses the district Court's record  
26 but reviews the evidence and law without deference to the district court's legal  
27 conclusions. (See *Lioce v. Cohen*, 124 Nev. 1, 20, 174 P.3d 970, 982 (2008)).  
28

1 Dated: Sept. 20, 2021

DocuSigned by:  
*Ali Shahrokhi*  
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3 **Ali Shahrokhi**  
4 Appellant, ALI SHAHROKHI  
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AFFIDAVIT of ALI SHAHROKHI

My name is ALI SHAHROKHI. I am a litigant before the court. All of the allegations herein are true and correct of my own personal knowledge. If called upon to testify, I could and would give competent and truthful evidence.

*I hereby declare under penalty of perjury under the laws of the State of Nevada the foregoing is both true and correct.*

Dated: September 20, 2021

DocuSigned by:  
*Ali Shahrokhi*  
D3A5D2A2AAB8408...

**Ali Shahrokhi**  
*Appellant.*

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**-CERTIFICATE-OF-SERVICE-**

I am an individual over the age of eighteen and not a party to the within action. My home address is 10695 Dean Martin Dr. #1214, Las Vegas, Nev. 89141. My phone number is (702)835-3558.

On **Septemebr 20th, 2021**, I served the following:

**Motion for Reconsideration / Clarification**

on an interested party in the above-entitled action by

  X   via e-mail transmission, (Eerved)

       personal service on the person below listed,

       depositing it in the U.S. Mail, postage prepaid,

and addressed to the person below listed,

       overnight delivery, addressed as follows:

**Kizzy Burrow  
1500 SW 11<sup>th</sup> St. #804  
Portland, Oregon 97201**

**Dawn Throne, Department U  
200 Lewis Ave.  
Las Vegas, NV 89155**

I declare under penalty of perjury under Nevada law the foregoing is true and correct.

Dated: **Septemebr 20th, 2021**

/s/ Ali Shahrokhi  
Declarant.