

ANTHONY THOMAS CHERNETSKY #44582
Warm Springs Correctional Center
P.O. Box 7007
Carson City, Nevada 89702
Petitioner In Proper Person

REC'D & FILED ✓

2022 JAN -6 PM 3:31

Electronically Filed
Jan 12 2022 02:19 p.m.
BY Elizabeth A. Brown
Clerk of Supreme Court

FIRST JUDICIAL DISTRICT COURT
IN AND FOR CARSON CITY

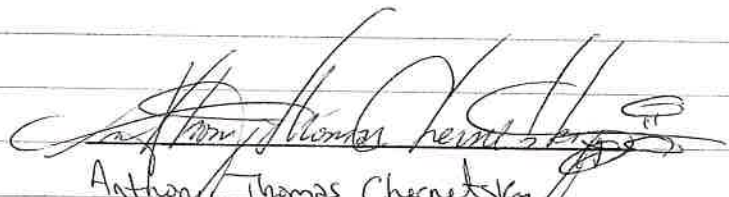
ANTHONY THOMAS CHERNETSKY,
Petitioner,
vs.
CHAPLAIN RICHARD SNYDER, et al.,
Respondents.

Case No. 20 EW 00008 1B
Dept. NO. I

NOTICE OF APPEAL

Comes Now the Petitioner, above-named, acting without the assistance of counsel and hereby Appeals the Order issued by this Court on 9 December 2021.

A copy of this Notice was also sent to William Shogren, Deputy Attorney General on this same day.
Dated 4 January 2022.


Anthony Thomas Chernetzky
Petitioner In Proper Person

REC'D & FILED

2022 JAN -6 PM 4:43

ANDREY ROWLATT
CLERK
[Signature]
DEPUTY

**In The First Judicial District Court of the State of Nevada
In and for Carson City**

ANTHONY THOMAS CHERNETSKY,

Petitioner(s),

vs.

CHAPLAIN RICHARD SNYDER, WSCC,
WARDEN PERRY RUSSELL, WSCC, AND
A.W. RON SCHRECKENGOST, WSCC,
Respondent(s).

Case No.: 20 EW 00008 1B

Dept. No.: I

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:
- ANTHONY THOMAS CHERNETSKY
2. Identify the judge issuing the decision, judgment, or order appealed from:
- HONORABLE JAMES T. RUSSELL
3. Identify each appellant and the name and address of counsel for each appellant:
- ANTHONY THOMAS CHERNETSKY #44502 (PROPER PERSON)
P.O. BOX 7007
CARSON CITY, NV 89702
4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):
- CHAPLAIN RICHARD SNYDER, WSCC
WARDEN PERRY RUSSELL, WSCC
A.W. RON SCHRECKENGOST, WSCC
AARON FORD, ATTORNEY GENERAL (COUNSEL FOR RESPONDENTS)
100 N. CARSON STREET
CARSON CITY, NV 89701

1 5. Indicate whether any attorney identified above in response to question 3 or 4 is not
2 licensed to practice law in Nevada and, if so, whether the district court granted that
3 attorney permission to appear under SCR 42 (attach a copy of any district court order
4 granting such permission):

5 - NOT APPLICABLE

6 6. Indicate whether appellant was represented by appointed or retained counsel in the
7 district court:

8 - APPELLANT IN PROPER PERSON IN DISTRICT COURT

9 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

10 - APPELLANT IN PROPER PERSON ON APPEAL

11 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date
12 of entry of the district court order granting such leave:

13 - NOT APPLICABLE

14 9. Indicate the date the proceedings commenced in the district court (e.g., date complaint,
15 indictment, information, or petition was filed):

16 - FIRST AMENDMENT PETITION FILED FEB. 19, 2020

17 10. Provide a brief description of the nature of the action and result in the district court,
18 including the type of judgment or order being appealed and the relief granted by the
19 district court:

20 - ORDER DENYING PETITIONER'S REQUEST FOR TEMPORARY
21 RESTRAINING ORDER AN/OR INJUNCTIVE RELIEF AND FURTHER
22 DENYING PETITIONER'S FIRST AMENDMENT PETITION AND/OR
23 APPLICATION FOR PEREMPTORY WRIT OF MANDAMUS FILED DEC. 9,
24 2021

25 11. Indicate whether the case has previously been the subject of an appeal to or original writ
26 proceeding in the Supreme Court and, if so, the caption and Supreme Court docket
27 number of the prior proceeding:

28 - PROPER PERSON PETITION FOR WRIT FILED IN SUPREME COURT;
ANTHONY THOMAS CHERNETSKY, PETITIONER VS. THE FIRST
JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR

1 THE COUNTY OF CARSON CITY; AND THE HONORABLE JAMES TODD
2 RUSSELL, DISTRICT JUDGE, RESPONDENTS; SUPREME COURT NO.
3 82280

4 12. Indicate whether this appeal involves child custody or visitation:

5 - NOT APPLICABLE

6 13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

7 - NOT APPLICABLE.

8 Dated this 6th day of January, 2022.

9 AUBREY ROWLATT, Carson City Clerk
10 885 E. Musser St., #3031
11 Carson City, NV 89701

12 By  Deputy
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DISTRICT COURT CIVIL COVER SHEET

CARSON CITY County, Nevada

Case No. _____

REC'D & FILED

2020 FEB 19 PM 4:42

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):

ANTHONY THOMAS CHERNETSKY #44582
 Warm Springs Correctional Center
 P.O. Box 7007
 Carson City, Nevada 89702

Defendant(s) (name/address/phone):

AUBREY ROWLAND
 CLERK
 CHAPLAIN RICHARD B. SNIDER
 WARDEN PERRY RUSSELL DEPUTY
 ASSOCIATE WARDEN RON SCHROEDER
 3301 E. 5th Street
 Carson City, Nevada 89702

Attorney (name/address/phone):

IN PROPER PERSON

Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types

Real Property	Torts	
Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other title to property Other Real Property <input type="checkbox"/> condemnation/eminent domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate	Construction defect & Contract	Judicial Review/Appeal
Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review <input type="checkbox"/> Foreclosure Mediation case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ		Other Civil Filing
Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input checked="" type="checkbox"/> Other Civil Writ		Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

10 February 2020
 Date

Signature of initiating party or representative

Judge: RUSSELL, JUDGE JAMES TODD Case No. 20 EW 00008 1B

Ticket No.
CTN:

CHERNETSKY, ANTHONY THOMAS

By:

-vs-

A.W. RON SCHRENGENGOST DRSPND

By:

Dob: Sex:
Lic: Sid:
CHAPLAIN RICHARD SNYDER DRSPND

By:

Dob: Sex:
Lic: Sid:
WARDEN PERRY RUSSELL DRSPND

By:

Dob: Sex:
Lic: Sid:
WSCC DRSPND

By:

Dob: Sex:
Lic: Sid:

Plate#: Make:
Year: Accident:
Type: Venue:
Location:

CHERNETSKY, ANTHONY THOMAS PLNTPET

Bond: Set:
Type: Posted:

Charges:

Ct. Offense Dt: Cvr:
Arrest Dt:
Comments:

Ct. Offense Dt: Cvr:
Arrest Dt:
Comments:

Ct. Offense Dt: Cvr:
Arrest Dt:
Comments:

Ct. Offense Dt: Cvr:
Arrest Dt:
Comments:

Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
1	01/06/22	CASE APPEAL STATEMENT	1BJHIGGINS	0.00	0.00
2	01/06/22	NOTICE OF DEFICIENCY IN NOTICE OF APPEAL	1BSBARAJAS	0.00	0.00
3	01/06/22	NOTICE OF APPEAL	1BSBARAJAS	24.00	0.00
4	12/13/21	NOTICE OF ENTRY OF ORDER	1BCCOOPER	0.00	0.00
5	12/09/21	CASE CLOSED	1BJHIGGINS	0.00	0.00
6	12/09/21	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BSBARAJAS	0.00	0.00
7	12/09/21	ORDER DENYING PETITIONER'S REQUEST FOR TEMPORARY RESTRAINING ORDER AND/OR INJUNCTIVE RELIEF AND FURTHER DENYING PETITIONER'S FIRST AMENDMENT PETITION AND/OR APPLICATION FOR PEREMPTORY WRIT OF MANDAMUS	1BSBARAJAS	0.00	0.00
8	11/23/21	REQUEST FOR SUBMISSION	1BCCOOPER	0.00	0.00

No.	Filed	Action	Operator	Fine/Cost	Due
9	11/23/21	NEVADA ATTORNEY GENERALS OFFICES RESPONSE TO PETITIONERS REQUEST FOR TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF	1BCCOOPER	0.00	0.00
10	08/24/21	NOTICE OF CHANGE OF DEPUTY ATTORNEY GENERAL	1BJHIGGINS	0.00	0.00
11	03/05/21	ORDER DENYING MOTION	1BCCOOPER	0.00	0.00
12	03/05/21	NOTICE IN LIEU OF REMITTITUR	1BCCOOPER	0.00	0.00
13	01/28/21	ORDER DISMISSING PETITION	1BPETERSON	0.00	0.00
14	12/21/20	ORDER TO RESPOND	1BSBARAJAS	0.00	0.00
15	12/17/20	REQUEST FOR TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF	1BPETERSON	0.00	0.00
16	11/02/20	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
17	11/02/20	ORDER DENYING PETITIONERS MOTION TO STRIKE OR IN THE ALTERNATIVE DENY RESPONDENTS LATE RESPONSE	1BCCOOPER	0.00	0.00
18	11/02/20	FILE RETURNED AFTER SUBMISSION - ORDER ENTERED	1BCCOOPER	0.00	0.00
19	11/02/20	ORDER DENYING PETITIONERS MOTION FOR DEFAULT JUDGMENT OR IN THE ALTERNATIVE A RULING OF THE PAPERS	1BCCOOPER	0.00	0.00
20	10/27/20	JUDICIAL NOTICE AND REQUEST FOR TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF	1BCCOOPER	0.00	0.00
21	05/11/20	RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION TO STRIKE OR IN THE ALTERNATIVE DENY RESPONDENTS' LATE RESPONSE (2)	1BSBARAJAS	0.00	0.00
22	05/11/20	PETITIONERS REPLY TO RESPONDENTS OPPOSITION	1BSBARAJAS	0.00	0.00
23	05/04/20	RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR DEFAULT JUDGMENT OR IN THE ALTERNATIVE A RULING ON THE PAPERS (2)	1BSBARAJAS	0.00	0.00
24	04/29/20	MOTION TO STRIKE OR IN THE ALTERNATIVE TO DENY RESPONDENTS LATE RESPONSE	1BPKEEFE	0.00	0.00
25	04/22/20	MOTION FOR DEFAULT JUDGMENT OR IN THE ALTERNATIVE A RULING ON THE PAPERS	1BCCOOPER	0.00	0.00
26	04/20/20	NEVADA ATTORNEY GENERAL'S OFFICE'S RESPONSE TO PETITIONER'S FIRST AMENDMENT PETITION (2)	1BSBARAJAS	0.00	0.00
27	02/24/20	ORDER FOR THE OFFICE OF THE NEVADA ATTORNEY GENERAL TO RESPOND	1BSBARAJAS	0.00	0.00
28	02/19/20	AFFIDAVIT OF ANTHONY THOMAS CHERNETSKY	1BJULIEH	0.00	0.00
29	02/19/20	FIRST AMENDMENT PETITION	1BCCOOPER	0.00	0.00

30	02/19/20	INMATE REQUEST/FILING - CIVIL (NEW FILING)	1BJULIEH	0.00	0.00
Total:				24.00	0.00
Totals By: COST				24.00	0.00
INFORMATION				0.00	0.00
*** End of Report ***					

REC'D & FILED ✓

2021 DEC -9 AM 9:03

AUREY ROWLATT
CLERK
BY *[Signature]*
DEPUTY

THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

ANTHONY THOMAS CHERNETSKY,

Case No.: 20 EW 00008 1B

Petitioner,

Dept. No.: I

vs.

CHAPLAIN RICHARD SNYDER, WSCC,
WARDEN PERRY RUSELL, WSCC, and
A.W. RON SCHRECKENGOST, WSCC,

Respondents.

**ORDER DENYING PETITIONER'S
REQUEST FOR TEMPORARY
RESTRAINING ORDER AND/OR
INJUNCTIVE RELIEF AND FURTHER
DENYING PETITIONER'S FIRST
AMENDMENT PETITION AND/OR
APPLICATION FOR PEREMPTORY
WRIT OF MANDAMUS**

This Matter comes before the Court on Petitioner, ANTHONY THOMAS CHERNETSKY's Request for Temporary Restraining Order and Injunctive Relief filed on December 17, 2020, and Petitioner's First Amendment Petition for a Writ of Habeas Corpus with Injunctive Relief or in the Alternative, a Peremptory Writ of Mandate filed on February 19, 2020.

This Court, having carefully reviewed the Parties' Motions, the Orders issued by the Supreme Court of Nevada, and all other papers, pleadings, and correspondence, hereby makes the following findings of fact and conclusions of law:

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1 **I. RELEVANT FACTS AND PROCEDURAL HISTORY.**

2 Chernetsky is an inmate at Warm Springs Correctional Center (“WSCC”) and is a
3 member of the religious group known as Wicca. Chernetsky filed a Writ of Habeas Corpus with
4 Injunctive Relief or in the Alternative, a Peremptory Writ of Mandate filed on February 19, 2020,
5 accompanied by an Affidavit (collectively the “First Amendment Petition or “Petition”).
6 Chernetsky asserts that Respondents have violated Chernetsky’s First Amendment rights by
7 committing an unconstitutional prior restraint. Namely, Chernetsky claims that “even though
8 certain Holy Days are approved for Wiccans to observe and celebrate, [the Wiccans] must submit
9 for special approval in order to actually have (Holy Day) service” including “Holy Day food
10 service for the Winter Solstice.” *See* Affidavit, at ¶¶ 3-4. Notably, Chernetsky states, “this
11 Petition is not a conditions of confinement complaint.” Petition at ¶ 4.

12 After receiving the Petition, pursuant to NRS 34.745, this Court issued an Order on
13 February 24, 2020, requiring the Nevada Attorney General’s office to submit a Response. The
14 Nevada Attorney General’s office filed its Response on April 20th. On April 22nd, Chernetsky
15 filed a Motion for Default Judgment or in the Alternative a Ruling on the Papers, which the
16 Nevada Attorney General timely opposed. On November 2, 2020, this Court issued an Order
17 denying Chernetsky’s Motion for Default because the Nevada Attorney General’s Response had
18 been filed *before* Chernetsky had moved for default.¹

19 Concurrently, Chernetsky filed a Petition for Writ of Certiorari in the Supreme Court of
20 Nevada on January 5, 2021 but failed to comply with NRAP 21 when he failed to pay the
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27 ¹ On the same day, this Court issued a separate Order Denying Petitioner’s Motion to Strike or in the Alternative
28 Deny Respondents’ Late Response (“Order Denying Motion to Strike”) because Chernetsky failed to demonstrate
any grounds to justify striking Respondents’ Response. Thus, the procedural history pertinent to the Order Denying
the Motion to Strike has been omitted from this Order to promote simplicity.

1 requisite filing fee and/or failed to provide the Nevada Supreme Court with an affidavit or
2 financial certificate demonstrating his inability to pay. *See* Order Denying Motion (Mar. 5,
3 2021). Accordingly, the Nevada Supreme Court dismissed the Petition for Writ of Certiorari,
4 and thereafter, denied Chernetsky's Motion for Reconsideration. *Id.* Most recently, on December
5 17, 2020, Chernetsky filed a Request for Temporary Restraining Order and Injunctive Relief (the
6 "Request"). On December 21, 2020, this Court issued an Order requiring the Nevada Attorney
7 General to Respond, who eventually responded on November 23, 2021.² Now, in light of
8 Chernetsky's First Amendment Petition and Request, as well as the Nevada Attorney General's
9 Responses, this Court can appropriately make a dispositive ruling.

12 II. DISCUSSION

13 As an initial matter, Chernetsky's Petition is construed liberally in light of procedural
14 defects. "According to traditional interpretation, the writ of habeas corpus is limited to attacked
15 upon the legality or duration of confinement." *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir.
16 1979); *see Dorrough v. On Habeas Corpus*, 2008 U.S. Dist. LEXIS 79536, *7 (E.D. Cal. Oct. 9,
17 2008) (dismissing petition for writ of habeas corpus because the petition for writ of habeas corpus
18 was the improper vehicle for the relief sought, as the inmate stated, "[p]etitioner is not
19 challenging his conviction or sentence in this petition."); *see also Allen v. Diaz*, No. 20-CV-1389
20 JLS, 2020 U.S. Dist. LEXIS 208356, at *1 (S.D. Cal. Nov. 6, 2020) (providing that the plaintiff,
21 a California state prisoner, brought a civil rights action to address constitutional violations under
22 42 U.S.C. § 1983 *after first filing* a writ of habeas corpus addressing his incarceration).
23 Nevertheless, inmates' petitions are given the benefit of liberal construction. *Porter v. Ollison*,

28 ² The undersigned deputy attorney general expressed his sincere apologies for the late response, which he attributed to his transition to the position.

620 F.3d 9523, 958 (9th Cir. 2010) (noting, however, that “in construing pro se petitions liberally, the petitioner is not entitled to the benefit of every conceivable doubt; the court is obligated to draw only reasonable inferences in the petitioner’s favor.”).

A. CHERNETSKY’S PETITION INCLUDES BOTH A PETITION FOR WRIT OF HABEAS CORPUS AND AN APPLICATION FOR WRIT OF MANDAMUS, AND THIS COURT HAS NOT INCORRECTLY INTERPRETED THE PETITION UNDER NRS CHAPTER 39.

Chernetsky asserts that this case “arises from an application for a writ of habeas corpus with injunctive relief or in the [a]lternative, a [sic] writ of mandate . . .”³ Chernetsky further contends that the “Petition is not a conditions of confinement complaint.” Petition at ¶ 4. In his Response to Notice of Dismissal to the Nevada Supreme Court, Chernetsky suggests that the District Court committed error in interpreting the Petition. Specifically, Chernetsky provides that “[t]he District Court originally construed the writ as a habeas corpus . . .” and that the Writ of Habeas Corpus “is [actually] a First Amendment Petition addressing the selective religious bias which was and continues to exist at the Warm Springs Correctional Center in Carson City, Nevada.” *Id.*

NRS 34.745 allows for the court to compel either the Nevada Attorney General’s office or the District Attorney’s office to file a response or answer to a prisoner’s petition for writ of habeas corpus. Further, NRS 34.185, which governs applications for writs of mandamus, provides that when an “applicant is alleging an unconstitutional prior restraint of the applicant’s rights pursuant to the First Amendment to the Constitution of the United States . . . the applicant shall insert the words ‘First Amendment Petition’ in the caption of the application.” Further, the statute notes that “[t]he court shall render judgment on an application for a writ described in

³ See Chernetsky’s Response to Notice of Dismissal to the Nevada Supreme Court.

1 subsection 1 not later than 30 days after the date on which the application for the writ is filed.”

2 *Id.*

3
4 Here, Chernetsky suggests that this Court incorrectly interpreted the Petition as a petition
5 for writ of habeas corpus. While it is true that this Court did interpret the Petition as a petition
6 for writ of habeas corpus for the purpose of compelling a response from the Nevada Attorney
7 General’s office, this Court *also* recognizes that the Petition includes *both* a petition for writ of
8 habeas corpus *and alternatively*, an application for writ of mandamus. Thus, it was appropriate
9 for this Court to request a response from the Attorney General’s office and this Court was not
10 required to issue a ruling within thirty days from the date of Chernetsky’s application for writ of
11 mandamus. Notably, the Attorney General’s Response to the writ of habeas corpus was
12 necessary and helpful to this instant Order.
13

14 B. FIRST AMENDMENT PRIOR RESTRAINT VIOLATION.

15 Chernetsky argues that Chaplain Snyder and Warden Russell acted arbitrarily and
16 capriciously in denying Chernetsky’s application for religious exemption, based on their
17 religious bias. Accordingly, this Court must determine whether the State of Nevada committed
18 a prior restraint under the First Amendment of the United States Constitution when it denied
19 Chernetsky’s application on behalf of Wicca, and if so, whether Chernetsky is intitled to
20 declaratory relief.
21

22 A prior restraint is any law or order that prohibits a person’s exercise of free speech
23 before it even occurs. *Young v. Hawaii*, 992 F.3d 765, 827 (9th Cir. 2021). In the licensing
24 context, a prior restraint occurs when the governmental authority fails to have “narrow, objective,
25 and definite standards to guide the licensing authority” in reviewing applications. *Southeastern*
26 *Promotions, Ltd. v. Conrad*, 420 U.S. 546, 554 (1975). Courts tend to give deference to prison
27 regulations, so long as the restrictions are legitimately related to penological objectives. *Leigh v.*
28

1 *Salazar*, 2012 U.S. App. LEXIS 2905, n.4 (9th Cir. Feb. 14, 2012). Prison administrators are
2 given discretion to uphold the “central objectives of the prison administration,” and accordingly,
3 their decisions are reviewed in light of the “restrictive circumstances of penal confinement.”
4
5 *Turner v. Safley*, 482 U.S. 78, 87 (1987).

6 Here, Chernetsky has not made any assertions that WSCC does not have narrow,
7 objective, and definite standards governing its review of accommodation applications. Further,
8 Chernetsky has failed to show that Chaplain Snyder or Warden Perry have acted arbitrarily,
9 capriciously, or otherwise unreasonably. Instead, the exhibits provided by Chernetsky reflect
10 that Chaplain Snyder respects Chernetsky’s faith, as Snyder seems rather responsive. For
11 instance, after an interruption of a Wicca meeting “due to groundskeeper work,” Chernetsky
12 filed a formal grievance to Chaplain Snyder, who replied, “[i]t is unfortunate that this occurred.
13 We are working to make sure that it will not happen again. Please let me know in writing if it
14 ever does happen again.”
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17 Further, when Chernetsky applied for religious meal accommodations for the Winter
18 Solstice, Chaplain Snyder and Warden Perry informed Chernetsky that “WSCC Culinary is
19 severely limited in facilities for food storage and food preparation.” Specifically, Chernetsky’s
20 application must be denied because WSCC’s approval of the accommodation “would create
21 serious hardship [for WSCC.]” This formal written denial provides a reasonable and adequate
22 basis for refusing Chernetsky’s application for special accommodations. Moreover, precedent
23 reflects that the restrictive circumstances of incarceration are unique and designed to accomplish
24 penal objective, which should be considered by this Court. Ultimately, Chernetsky has failed to
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1 demonstrate that Respondents have committed an unconstitutional prior restraint under the First
2 Amendment of the United States Constitution.⁵

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4 **III. JUDGMENT.**

5 **NOW, THEREFORE, GOOD CAUSE APPEARING,**

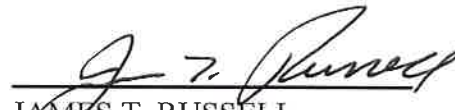
6 Petitioner's First Amendment Petition for a Writ of Habeas Corpus with Injunctive Relief
7 or in the Alternative, a Peremptory Writ of Mandate filed on February 19, 2020.

8 **IT IS HEREBY ORDERED** that Petitioner's First Amendment Petition for a Writ of
9 Habeas Corpus with Injunctive Relief or in the Alternative, a Peremptory Writ of Mandate filed
10 on February 19, 2020 are **DENIED**.

11
12 **IT IS FURTHER ORDERED** that Petitioner's Request for Temporary Restraining
13 Order and Injunctive Relief filed on December 17, 2020 is **DENIED** based on Petitioner's failure
14 to demonstrate a likelihood of success on the merits.

15 **IT SO ORDERED.**

16
17 **DATED** this 9th day of December, 2021.

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19 
20 JAMES T. RUSSELL
21 DISTRICT COURT JUDGE
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26 ⁵ Pursuant to this conclusion, injunctive relief is not appropriate because Chernetsky is unlikely to achieve success
27 on the merits. Accordingly, Chernetsky's Request for Temporary Restraining Order and Injunctive Relief filed on
28 December 17, 2020 shall be denied. *See Desarallo v. Alliance Bond Fund*, 527 U.S. 308, 340 (1999) (providing that
to obtain "injunctive relief generally, a plaintiff must show a likelihood of success on the merits and irreparable
injury in the absence of injunction." Moreover, this Court will not compel WSCC to provide special
accommodations when doing so is impractical and would result in substantial hardship.

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 9th day of December, 2021, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Anthony Thomas Chernetsky, Inmate No. 44502
Warm Springs Correctional Center
P.O. Box 7007
Carson City, NV 89702

William P. Shogren, Esq.
Nevada Attorney General's Office
100 N Carson Street
Carson City, NV 89701




Jackson J. Tann, Esq.
Law Clerk, Dept. I

1 AARON D. FORD
Attorney General
2 WILLIAM P. SHOGREN, Bar No. 14619
Deputy Attorney General
3 100 N. Carson Street
Carson City, NV 89701
4 775-684-1257
wshogren@ag.nv.gov

5 *Attorneys for Defendants,*
6 *Perry Russell and Richard Snyder*

REC'D & FILED
2021 DEC 13 AM 11:29

AUDREY DONLATT
CLERK
BY  DEPUTY

7
8 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
9 **IN AND FOR CARSON CITY**

10 ANTHONY THOMAS CHERNETSKY,

11 Petitioner,

12 vs.

13 CHAPLAIN RICHARD SNYDER, WSCC,
WARDEN PERRY RUSSELL, WSCC, and
14 A.W. RON SCHRECKENGOST, WSCC,

15 Respondents

Case No. 20 EW 00008 1B

Dept. No. I

16 **NOTICE OF ENTRY OF ORDER**

17 PLEASE TAKE NOTICE that an Order Denying Petitioner's Request for Temporary
18 Restraining Order and/or Injunctive Relief and Further Denying Petitioner's First Amendment Petition
19 and/or Application for Peremptory Writ of Mandamus was entered on December 9, 2021, in the above
20 matter, a copy of which is attached hereto as Exhibit 1.

21 DATED this 10th day of December, 2021.

22 AARON D. FORD
Attorney General

23 By: 

24 WILLIAM P. SHOGREN, Bar No. 14619
Deputy Attorney General


25 *Attorneys for Defendants*
26
27
28

AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the foregoing document does not contain the social security number of any person.

Dated: December 10, 2021

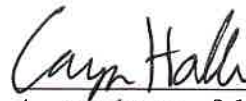
AARON FORD
Attorney General

By: 
WILLIAM P. SHOGREN, Bar No. 14619
Deputy Attorney General

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that
3 on this 10th day of December, 2021, I caused to be deposited for mailing in the U.S. Mail a copy of the
4 foregoing, **NOTICE OF ENTRY OF ORDER**, to the following:

5
6 Anthony Thomas Chernetsky #44502
7 Warm Springs Correctional Center
8 P.O. Box 7007
9 Carson City, NV 89702

10 

11 An employee of the
12 Office of the Attorney General
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EXHIBIT 1

EXHIBIT 1

REC'D & FILED
2021 DEC -9 AM 9:03
AUREY ROWLATT
CLERK
BY *[Signature]*
DEPUTY

THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

ANTHONY THOMAS CHERNETSKY,

Case No.: 20 EW 00008 1B

Petitioner,

Dept. No.: I

vs.

CHAPLAIN RICHARD SNYDER, WSCC,
WARDEN PERRY RUSSELL, WSCC, and
A.W. RON SCHRECKENGOST, WSCC,

Respondents.

**ORDER DENYING PETITIONER'S
REQUEST FOR TEMPORARY
RESTRAINING ORDER AND/OR
INJUNCTIVE RELIEF AND FURTHER
DENYING PETITIONER'S FIRST
AMENDMENT PETITION AND/OR
APPLICATION FOR PEREMPTORY
WRIT OF MANDAMUS**

This Matter comes before the Court on Petitioner, ANTHONY THOMAS CHERNETSKY's Request for Temporary Restraining Order and Injunctive Relief filed on December 17, 2020, and Petitioner's First Amendment Petition for a Writ of Habeas Corpus with Injunctive Relief or in the Alternative, a Peremptory Writ of Mandate filed on February 19, 2020. This Court, having carefully reviewed the Parties' Motions, the Orders issued by the Supreme Court of Nevada, and all other papers, pleadings, and correspondence, hereby makes the following findings of fact and conclusions of law:

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1 **I. RELEVANT FACTS AND PROCEDURAL HISTORY.**

2 Chernetsky is an inmate at Warm Springs Correctional Center (“WSCC”) and is a
3 member of the religious group known as Wicca. Chernetsky filed a Writ of Habeas Corpus with
4 Injunctive Relief or in the Alternative, a Peremptory Writ of Mandate filed on February 19, 2020,
5 accompanied by an Affidavit (collectively the “First Amendment Petition or “Petition”).
6 Chernetsky asserts that Respondents have violated Chernetsky’s First Amendment rights by
7 committing an unconstitutional prior restraint. Namely, Chernetsky claims that “even though
8 certain Holy Days are approved for Wiccans to observe and celebrate, [the Wiccans] must submit
9 for special approval in order to actually have (Holy Day) service” including “Holy Day food
10 service for the Winter Solstice.” See Affidavit, at ¶¶ 3-4. Notably, Chernetsky states, “this
11 Petition is not a conditions of confinement complaint.” Petition at ¶ 4.
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13

14 After receiving the Petition, pursuant to NRS 34.745, this Court issued an Order on
15 February 24, 2020, requiring the Nevada Attorney General’s office to submit a Response. The
16 Nevada Attorney General’s office filed its Response on April 20th. On April 22nd, Chernetsky
17 filed a Motion for Default Judgment or in the Alternative a Ruling on the Papers, which the
18 Nevada Attorney General timely opposed. On November 2, 2020, this Court issued an Order
19 denying Chernetsky’s Motion for Default because the Nevada Attorney General’s Response had
20 been filed *before* Chernetsky had moved for default.¹
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23 Concurrently, Chernetsky filed a Petition for Writ of Certiorari in the Supreme Court of
24 Nevada on January 5, 2021 but failed to comply with NRAP 21 when he failed to pay the
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28 ¹ On the same day, this Court issued a separate Order Denying Petitioner’s Motion to Strike or in the Alternative Deny Respondents’ Late Response (“Order Denying Motion to Strike”) because Chernetsky failed to demonstrate any grounds to justify striking Respondents’ Response. Thus, the procedural history pertinent to the Order Denying the Motion to Strike has been omitted from this Order to promote simplicity.

1 requisite filing fee and/or failed to provide the Nevada Supreme Court with an affidavit or
2 financial certificate demonstrating his inability to pay. *See* Order Denying Motion (Mar. 5,
3 2021). Accordingly, the Nevada Supreme Court dismissed the Petition for Writ of Certiorari,
4 and thereafter, denied Chernetsky's Motion for Reconsideration. *Id.* Most recently, on December
5 17, 2020, Chernetsky filed a Request for Temporary Restraining Order and Injunctive Relief (the
6 "Request"). On December 21, 2020, this Court issued an Order requiring the Nevada Attorney
7 General to Respond, who eventually responded on November 23, 2021.² Now, in light of
8 Chernetsky's First Amendment Petition and Request, as well as the Nevada Attorney General's
9 Responses, this Court can appropriately make a dispositive ruling.
10
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12 II. DISCUSSION

13 As an initial matter, Chernetsky's Petition is construed liberally in light of procedural
14 defects. "According to traditional interpretation, the writ of habeas corpus is limited to attacked
15 upon the legality or duration of confinement." *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir.
16 1979); *see Dorrough v. On Habeas Corpus*, 2008 U.S. Dist. LEXIS 79536, *7 (E.D. Cal. Oct. 9,
17 2008) (dismissing petition for writ of habeas corpus because the petition for writ of habeas corpus
18 was the improper vehicle for the relief sought, as the inmate stated, "[p]etitioner is not
19 challenging his conviction or sentence in this petition."); *see also Allen v. Diaz*, No. 20-CV-1389
20 JLS, 2020 U.S. Dist. LEXIS 208356, at *1 (S.D. Cal. Nov. 6, 2020) (providing that the plaintiff,
21 a California state prisoner, brought a civil rights action to address constitutional violations under
22 42 U.S.C. § 1983 *after first filing* a writ of habeas corpus addressing his incarceration).
23 Nevertheless, inmates' petitions are given the benefit of liberal construction. *Porter v. Ollison*,

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28 ² The undersigned deputy attorney general expressed his sincere apologies for the late response, which he attributed to his transition to the position.

1 620 F.3d 9523, 958 (9th Cir. 2010) (noting, however, that “in construing pro se petitions
2 liberally, the petitioner is not entitled to the benefit of every conceivable doubt; the court is
3 obligated to draw only reasonable inferences in the petitioner’s favor.”).

4
5 A. CHERNETSKY’S PETITION INCLUDES BOTH A PETITION FOR WRIT OF
6 HABEAS CORPUS AND AN APPLICATION FOR WRIT OF MANDAMUS. AND
7 THIS COURT HAS NOT INCORRECTLY INTERPRETED THE PETITION UNDER
8 NRS CHAPTER 39.

9 Chernetsky asserts that this case “arises from an application for a writ of habeas corpus
10 with injunctive relief or in the [a]lternative, a [sic] writ of mandate . . .”³ Chernetsky further
11 contends that the “Petition is not a conditions of confinement complaint.” Petition at ¶ 4. In his
12 Response to Notice of Dismissal to the Nevada Supreme Court, Chernetsky suggests that the
13 District Court committed error in interpreting the Petition. Specifically, Chernetsky provides that
14 “[t]he District Court originally construed the writ as a habeas
15 corpus . . .” and that the Writ of Habeas Corpus “is [actually] a First Amendment Petition
16 addressing the selective religious bias which was and continues to exist at the Warm Springs
17 Correctional Center in Carson City, Nevada.” *Id.*

18
19 NRS 34.745 allows for the court to compel either the Nevada Attorney General’s office
20 or the District Attorney’s office to file a response or answer to a prisoner’s petition for writ of
21 habeas corpus. Further, NRS 34.185, which governs applications for writs of mandamus,
22 provides that when an “applicant is alleging an unconstitutional prior restraint of the applicant’s
23 rights pursuant to the First Amendment to the Constitution of the United States . . . the applicant
24 shall insert the words ‘First Amendment Petition’ in the caption of the application.” Further, the
25 statute notes that “[t]he court shall render judgment on an application for a writ described in
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³ See Chernetsky’s Response to Notice of Dismissal to the Nevada Supreme Court.

1 subsection 1 not later than 30 days after the date on which the application for the writ is filed.”

2 *Id.*

3
4 Here, Chernetsky suggests that this Court incorrectly interpreted the Petition as a petition
5 for writ of habeas corpus. While it is true that this Court did interpret the Petition as a petition
6 for writ of habeas corpus for the purpose of compelling a response from the Nevada Attorney
7 General’s office, this Court *also* recognizes that the Petition includes *both* a petition for writ of
8 habeas corpus *and alternatively*, an application for writ of mandamus. Thus, it was appropriate
9 for this Court to request a response from the Attorney General’s office and this Court was not
10 required to issue a ruling within thirty days from the date of Chernetsky’s application for writ of
11 mandamus. Notably, the Attorney General’s Response to the writ of habeas corpus was
12 necessary and helpful to this instant Order.
13

14 **B. FIRST AMENDMENT PRIOR RESTRAINT VIOLATION.**

15 Chernetsky argues that Chaplain Snyder and Warden Russell acted arbitrarily and
16 capriciously in denying Chernetsky’s application for religious exemption, based on their
17 religious bias. Accordingly, this Court must determine whether the State of Nevada committed
18 a prior restraint under the First Amendment of the United States Constitution when it denied
19 Chernetsky’s application on behalf of Wicca, and if so, whether Chernetsky is intitled to
20 declaratory relief.
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22
23 A prior restraint is any law or order that prohibits a person’s exercise of free speech
24 before it even occurs. *Young v. Hawaii*, 992 F.3d 765, 827 (9th Cir. 2021). In the licensing
25 context, a prior restraint occurs when the governmental authority fails to have “narrow, objective,
26 and definite standards to guide the licensing authority” in reviewing applications. *Southeastern*
27 *Promotions, Ltd. v. Conrad*, 420 U.S. 546, 554 (1975). Courts tend to give deference to prison
28 regulations, so long as the restrictions are legitimately related to penological objectives. *Leigh v.*

1 *Salazar*, 2012 U.S. App. LEXIS 2905, n.4 (9th Cir. Feb. 14, 2012). Prison administrators are
2 given discretion to uphold the “central objectives of the prison administration,” and accordingly,
3 their decisions are reviewed in light of the “restrictive circumstances of penal confinement.”
4
5 *Turner v. Safley*, 482 U.S. 78, 87 (1987).

6 Here, Chernetsky has not made any assertions that WSCC does not have narrow,
7 objective, and definite standards governing its review of accommodation applications. Further,
8 Chernetsky has failed to show that Chaplain Snyder or Warden Perry have acted arbitrarily,
9 capriciously, or otherwise unreasonably. Instead, the exhibits provided by Chernetsky reflect
10 that Chaplain Snyder respects Chernetsky’s faith, as Snyder seems rather responsive. For
11 instance, after an interruption of a Wicca meeting “due to groundskeeper work,” Chernetsky
12 filed a formal grievance to Chaplain Snyder, who replied, “[i]t is unfortunate that this occurred.
13 We are working to make sure that it will not happen again. Please let me know in writing if it
14 ever does happen again.”
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16

17 Further, when Chernetsky applied for religious meal accommodations for the Winter
18 Solstice, Chaplain Snyder and Warden Perry informed Chernetsky that “WSCC Culinary is
19 severely limited in facilities for food storage and food preparation.” Specifically, Chernetsky’s
20 application must be denied because WSCC’s approval of the accommodation “would create
21 serious hardship [for WSCC.]” This formal written denial provides a reasonable and adequate
22 basis for refusing Chernetsky’s application for special accommodations. Moreover, precedent
23 reflects that the restrictive circumstances of incarceration are unique and designed to accomplish
24 penal objective, which should be considered by this Court. Ultimately, Chernetsky has failed to
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1 demonstrate that Respondents have committed an unconstitutional prior restraint under the First
2 Amendment of the United States Constitution.⁵

3 **III. JUDGMENT.**

4 **NOW, THEREFORE, GOOD CAUSE APPEARING,**


5
6 Petitioner's First Amendment Petition for a Writ of Habeas Corpus with Injunctive Relief
7 or in the Alternative, a Peremptory Writ of Mandate filed on February 19, 2020.

8 **IT IS HEREBY ORDERED** that Petitioner's First Amendment Petition for a Writ of
9 Habeas Corpus with Injunctive Relief or in the Alternative, a Peremptory Writ of Mandate filed
10 on February 19, 2020 are **DENIED**.

11
12 **IT IS FURTHER ORDERED** that Petitioner's Request for Temporary Restraining
13 Order and Injunctive Relief filed on December 17, 2020 is **DENIED** based on Petitioner's failure
14 to demonstrate a likelihood of success on the merits.

15 **IT SO ORDERED.**

16
17 **DATED** this 9th day of December, 2021.

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19 
20 JAMES T. RUSSELL
21 DISTRICT COURT JUDGE
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26 ⁵ Pursuant to this conclusion, injunctive relief is not appropriate because Chernetsky is unlikely to achieve success
27 on the merits. Accordingly, Chernetsky's Request for Temporary Restraining Order and Injunctive Relief filed on
28 December 17, 2020 shall be denied. *See Desarallo v. Alliance Bond Fund*, 527 U.S. 308, 340 (1999) (providing that
to obtain "injunctive relief generally, a plaintiff must show a likelihood of success on the merits and irreparable
injury in the absence of injunction." Moreover, this Court will not compel WSCC to provide special
accommodations when doing so is impractical and would result in substantial hardship.


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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 9th day of December, 2021, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Anthony Thomas Chernetsky, Inmate No. 44502
Warm Springs Correctional Center
P.O. Box 7007
Carson City, NV 89702

William P. Shogren, Esq.
Nevada Attorney General's Office
100 N Carson Street
Carson City, NV 89701



Jackson J. Tann, Esq.
Law Clerk, Dept. I

REC'D & FILED

2022 JAN 6 PM 3:34

AUBREY ROWLATT
CLERK

DEPUTY

**In The First Judicial District Court of the State of Nevada
In and for Carson City**

ANTHONY THOMAS CHERNETSKY,

Plaintiff,

vs.

CHAPLIAN RICHARD SNYDER, WSCC,
WARDEN PERRY RUSSELL, WSCC, ABD
A.W. RON SCHRECKENGOST,
Defendant.

Case No.: 20 EW 00008 1B

Dept. No.: I

**NOTICE OF DEFICIENCY IN NOTICE
OF APPEAL**

PLEASE TAKE NOTICE that a Notice of Appeal was filed January 6th, 2022, in the above-entitled action despite the fact that there appears to be the following deficiency(ies) noted by the Clerk at the time of filing:

- ☐ \$24.00 District Court filing fee not paid.
- ☐ \$250.00 filing fee for the Clerk of the Supreme Court not paid.
- ☐ Document not signed.
- ☐ Document presented was not an original.
- ☐ Case Appeal Statement not filed.
- ☒ No proof of service upon opposing counsel/litigant.
- ☐ Other

DATED this 6th day of January, 2022.

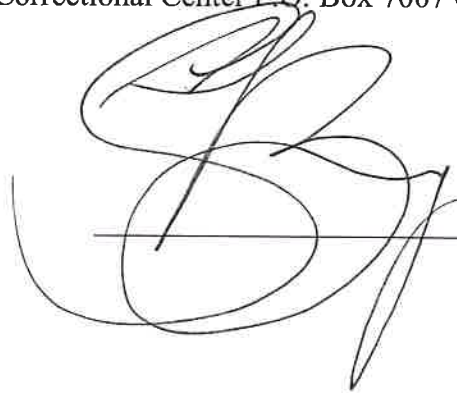
AUBREY ROWLATT, CLERK

By

, Deputy

CERTIFICATE OF SERVICE

I hereby certify that I am employed by the Office of the Carson City District Court Clerk, Carson City, Nevada, and that on the 7th day of January, 2022, I served the foregoing NOTICE OF DEFICIENCY IN NOTICE OF APPEAL by e-filing with appeal documents to Elizabeth A. Brown, Clerk of the Supreme Court, 201 S. Carson Street, Ste. 250, Carson City, NV 89701-4702 and by depositing for mailing a true copy thereof to Athnony Thomas Chernestsky # 44502 Warm Springs Correctional Center P.O. Box 7007 Carson City, Nevada 89702.

A handwritten signature in black ink, appearing to be 'SB', is written over a horizontal line.