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

DAVID MAFFIT,

Petitioner,

vs.

THE EIGHTH JUDICIAL  
DISTRICT COURT OF THE STATE  
OF NEVADA, IN AND FOR THE  
COUNTY OF CLARK; AND THE  
HONORABLE MONICA  
TRUJILLO DISTRICT JUDGE,

Respondent,

STATE OF NEVADA,

Real Party In Interest.

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Elizabeth A. Brown  
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Case No.: \_\_\_\_\_

Dist. Ct. Case No.: A-21-837620-W  
Dept. No.: 3

Justice Ct. Case No.: 19M23460X

**PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION**

MICHAEL D. PARIENTE, ESQ,  
COUNSEL FOR PETITIONER  
Nevada Bar Number 9469  
JOHN GLENN WATKINS, ESQ,  
OF COUNSEL  
Nevada Bar Number 1574  
3800 Howard Hughes Parkway #620  
Las Vegas, Nevada 89169  
Telephone: (702) 966-5310  
Facsimile: (702) 953-7055  
[michael@parientelaw.com](mailto:michael@parientelaw.com)  
[johngwatkins@hotmail.com](mailto:johngwatkins@hotmail.com)

STEVEN WOLFSON,  
DISTRICT ATTORNEY  
200 Lewis, Floor 3  
Las Vegas, Nevada 89101  
Telephone: (702) 671-3847  
Facsimile: (702) 385-1687  
[motions@clarkcountyda.com](mailto:motions@clarkcountyda.com)

MONICA TRUJILLO  
DISTRICT COURT JUDGE  
200 S. Lewis St. Dept. 23  
Las Vegas, NV 89101

**“INDEX”**

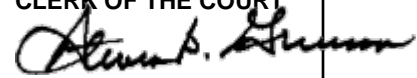
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**PET**

M. EVE HANAN, ESQ.  
NEVADA BAR NO. 14678C  
ANNE R. TRAUM, ESQ.  
NEVADA BAR NO. 7939  
**THOMAS & MACK LEGAL CLINIC**  
Post Office Box 71075  
Las Vegas, Nevada 89170-1075  
Telephone: (702) 895-2080  
Eve.hanan@unlv.edu  
Anne.traum@unlv.edu  
*Attorneys for Defendant*

CASE NO: A-21-837620-W  
Department 3

**LAS VEGAS JUSTICE COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA, )  
 )  
Plaintiff/Respondent )  
 )  
 )  
 )  
v. )  
 )  
DAVID CHARLES MAFFIT #1302219, )  
 )  
Defendant, )  
\_\_\_\_\_ )

District Court Case No. \_\_\_\_\_  
Dept. No.

Justice Court Case No. 19M23460X  
Dept. No. 12

**(Hearing Requested)**

**PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION**

COMES NOW PETITIONER, DAVID C. MAFFIT, by and through his attorneys of record, ANNE R. TRAUM and M. EVE HANAN, of the Thomas & Mack Legal Clinic, and moves this Honorable Court for an order granting this Petition for Writ of Mandamus and/or Prohibition reversing Justice of the Peace Diana Sullivan's orders denying (1) Defendant's Motion to Dismiss the Criminal Complaint Due to Lack of Jurisdiction and Violation of Due Process, dated February 11, 2021, and (2) Defendant's Jury Demand, dated October 6, 2020. Trial is currently set for October 20, 2021.

DATED this 9<sup>th</sup> day of July, 2021.

BY: /s/ Anne R. Traum  
M. EVE HANAN, ESQ.  
NEVADA BAR NO. 14678C

ANNE R. TRAUM, ESQ.  
NEVADA BAR NO. 7939  
Attorneys for Defendant/Petitioner

**PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION**

TO: STATE OF NEVADA, Plaintiff

TO: DISTRICT ATTORNEY, Attorney for Plaintiff

YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing PETITION on for hearing before the Court at the Courtroom of the above-entitled Court on the \_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_m. of said day, in Department \_\_\_\_ of said Court.

\_\_\_\_\_  
M. EVE HANAN  
NEVADA BAR NO. 14678C  
ANNE R. TRAUM, ESQ.  
NEVADA BAR NO. 7939  
UNLV Thomas & Mack Legal Clinic  
Attorneys for Defendant/Petitioner

**I.**

**LAW AND ARGUMENT**

**A. Introduction**

Mr. Maffit files this Petition because there is no “plain, speedy and adequate remedy in the ordinary course of law” for his jurisdictional, statutory, and constitutional challenge to the charged offense. *See* NRS 34.170 (writ of mandamus standard); NRS 34.330 (writ of prohibition standard). The Criminal Complaint charges Mr. Maffit with Engaging in Business Without a Contractor’s License, a violation of NRS 624.700 and NRS 624.750(2)(a). Although this offense is labeled a misdemeanor, it is punishable by felony-level fines that far exceed the \$1,000 statutory maximum fine for a misdemeanor.

1 Mr. Maffit presents three issues, previously raised in the Justice Court:<sup>1</sup>

- 2 1. The Justice Court lacks jurisdiction because the charged offense is not a  
3 misdemeanor. *See* NRS 193.120(3) (classifying a misdemeanor as an offense having  
4 a “fine of not more than \$1,000”), NRS 4.370 (limiting justice court jurisdiction to  
5 misdemeanor offenses).
- 6 2. Assuming jurisdiction in the Justice Court, the charged offense violates due process  
7 because NRS 624.750(2)(a) is unconstitutionally vague and appears to authorize  
8 felony-level fines without felony-level procedural protections.
- 9 3. Assuming the case proceeds in the Justice Court, Mr. Maffit has a right to jury trial  
10 because the charged offense is “serious” for purposes of the Sixth Amendment.

## 11 **B. Statutory Background**

12 Whether the charged offense is a misdemeanor is central to the jurisdictional, statutory, and  
13 constitutional questions at issue. Before 2015, first offense contracting without a license was a  
14 misdemeanor like any other: it was punishable by a maximum six-month jail term and/or a  
15 maximum \$1,000 fine. *See* NRS 193.120(1) (classifying misdemeanors); A.B. 137, 2015 Leg.,  
16 78th Sess. at 5 (Nev. 2015) (showing statutory text before and after amendment). In 2015, the  
17 Nevada Legislature dramatically “increased the fine structure” for this offense in order to deter  
18 violations and “put some teeth” into the fines. *See Minutes of the Nev. St. Legislature: Hearing*  
19 *on Assembly Bill No. 137 Before the Assembly Comm. on Com. and Lab.*, 2015 Leg., 78th Sess. 4  
20 (April March 2, 2015). The legislature in 2015 added two fines provisions: it increased the fine  
21 for a first offense to “not less than \$1,000 nor more than \$4,000,” NRS 624.750(2)(a), and added  
22  
23  
24  
25

---

26 <sup>1</sup> Mr. Maffit filed a jury demand on September 1, 2020, which was denied on the record on  
27 October 6, 2020. Mr. Maffit filed a motion to dismiss on December 1, 2020, which was denied in  
28 a written order of the court on February 11, 2021. *See* Exhibit 1, Order denying Defendant’s  
Motion to Dismiss the Criminal Complaint Due to Lack of Jurisdiction and Violation of Due  
Process, February 11, 2021, and Exhibit 2, Transcript of Hearing, October 6, 2020.

1 a new “fine enhancement,” NRS 624.750(3). It retained other financial penalties described  
2 below. The \$4,000 maximum fine plainly exceeds the maximum \$1,000 fine for a misdemeanor  
3 offense under the classification and misdemeanor punishment statutes.

4 The classification statute provides that a misdemeanor fine cannot exceed \$1,000:

- 5
- 6 1. A crime is an act or omission forbidden by law and punishable upon conviction by  
7 death, imprisonment, fine or other penal discipline.
  - 8 2. Every crime which may be punished by death or by imprisonment in the state prison  
9 is a felony.
  - 10 3. *Every crime punishable by a fine of not more than \$1,000, or by imprisonment in a  
11 county jail for not more than 6 months, is a misdemeanor.*
  - 12 4. Every other crime is a gross misdemeanor.

13 NRS 193.120 (emphasis added).

14 The misdemeanor punishment statute also caps misdemeanor fines at \$1,000, providing in  
15 relevant part:

- 16
- 17 1. Every person convicted of a misdemeanor shall be punished by imprisonment in the  
18 county jail for not more than 6 months, or by a fine of not more than \$1,000, or by both  
19 fine and imprisonment, unless the statute in force at the time of commission of such  
20 misdemeanor prescribed a different penalty.

21 NRS 193.150(1).

22 A defendant convicted of first offense contracting without a license faces up to six months in  
23 jail, NRS 624.750(2)(a), criminal fines, and financial penalties, including:

- 24
- 25 • a mandatory criminal fine of not less than \$1,000 nor more than \$4,000, NRS  
26 624.750(2)(a);
  - 27 • an additional criminal “fine enhancement” of “not more than 10 percent of the value of  
28 any contract if that person commenced any work or received any money relating to the  
contract,” NRS 624.750(3);

- court, prosecution, and investigation costs, and damages up to the amount of the defendant's pecuniary gain from the violation, NRS 624.700; and
- an administrative fine imposed by the Nevada Contractors' Board of "not less than \$1,000 and not more than \$50,000," NRS 624.710(1).

Today the charged offense is still labeled a misdemeanor but carries felony-level fines. *See* NRS 193.140 (maximum fine for a gross misdemeanor is \$2,000); NRS 193.130 (maximum fine for a category E felony is \$5,000). The questions are whether the Justice Court has jurisdiction over this misdemeanor-felony creature, whether it violates due process, and whether it is a "serious" offense requiring a right to jury trial.

**C. A petition for writ of mandamus or prohibition is appropriate.**

Mr. Maffit is entitled to a writ of mandamus or prohibition because he presents important, legal issues for which there is no "plain, speedy and adequate remedy in the ordinary course of law." *See* NRS 34.170 (standard for granting a writ of mandamus compelling performance of an act) and NRS 34.330 (standard for granting a writ of prohibition arresting proceedings). A writ is specifically authorized in a case, such as this, where the Justice Court has "has exceeded [its] jurisdiction," *see* NRS 34.020(2), and the defendant challenges the constitutionality of a statute in the Justice Court, *see* NRS 34.020(3) (providing for appellate review from a case arising in the Justice Court after the district court has passed upon the constitutionality or validity of a statute).

A writ of mandamus or prohibition is appropriate because this Petition presents constitutional, statutory, and jurisdictional issues of "first impression and fundamental public importance" that "need[] clarification," *see Williams v. Eighth Judicial Dist. Court*, 127 Nev. 518, 525, 262 P.3d 360, 365 (2011) (citing, inter alia, *County of Clark v. Upchurch*, 114 Nev. 749, 753, 961 P.2d 754, 757 (1998)). Review of a pre-trial writ promotes judicial economy and mitigates or resolves future litigation. *Id.*, 127 Nev. at 525, 262 P.3d at 365 (citing *Smith v.*

1 *District Court*, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997)).

2       The central issue here, whether the charged offense is a misdemeanor, is profoundly  
3 consequential: it determines which court has jurisdiction (justice or district court), which  
4 procedural safeguards apply (including whether the defendant has a right to a preliminary  
5 hearing, counsel, jury trial, a twelve-person jury, and appeal to the Nevada Supreme Court), and  
6 the maximum fine amount, if any, that may be imposed upon conviction. Most convictions in  
7 Nevada are for misdemeanor offenses,<sup>2</sup> so what qualifies as a misdemeanor and the maximum  
8 fine that can imposed for a misdemeanor are issues of statewide importance and worthy of  
9 clarification.  
10

11       Either a writ of prohibition or mandamus could provide relief here. A writ of prohibition  
12 would preclude the Justice Court from trying a case outside its jurisdiction. *See* NRS 34.320(a  
13 writ of prohibition “arrests proceedings ... [that] are without or in excess of the [tribunal’s]  
14 jurisdiction”); *State v. Justice Ct. of Las Vegas Tp., Clark County (Richmond)*, 112 Nev. 803,  
15 806, 919 P.2d 401, 403 (1996) (granting writ of prohibition because justice court exceeded its  
16 jurisdiction); *see also Gladys Baker Olsen Family Trust By and Through Olsen v Eighth Judicial*  
17 *Dist. Court*, 110 Nev. 548, 552, 874 P.2d 778, 780-81(1994) (“*Gladys Baker Olsen Family*  
18 *Trust*”) (the purpose of a writ of prohibition is “to prevent courts from transcending the limits of  
19 their jurisdiction”). A writ of mandamus would compel the Justice Court to dismiss the Criminal  
20 Complaint on jurisdictional or constitutional grounds or, at a minimum, guarantee Mr. Maffit his  
21 right to a jury trial. *See, e.g., Andersen v. Eighth Judicial Dist. Ct. in and for Clark County*, 135  
22 Nev. 321 324-25, 448 P.23d 1120, 1124 (2019) (granting writ of mandamus requiring right to  
23 jury trial for misdemeanor domestic battery).  
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28 <sup>2</sup> *See, e.g., Nevada Judiciary Annual Report 2020* at 26, Table 3 (2020) (listing total criminal, traffic, and non-traffic filings and dispositions).



1 Mr. Maffit has “no plain, speedy, and adequate” remedy at law. NRS 34.170, NRS  
2 34.330. Given his well-founded jurisdictional and constitutional challenges, forcing Mr. Maffit  
3 to proceed to trial in the justice court would involve substantial time, risk, legal uncertainty,  
4 procedural unfairness, and stigma. If convicted, he would be required to appeal to the district  
5 court before petitioning by writ to the Nevada Supreme Court, a process that would take months  
6 or years to complete. *See, e.g.,* Nev. Const. Art. 6, § 6 and NRS 177.015(1)(a) (vesting district  
7 court with final appellate jurisdiction over cases arising in the justice courts); NRS 34.020(2)-(3)  
8 (authorizing appellate court review by writ of jurisdictional and constitutional challenges in cases  
9 arising from justice court).

11 The Nevada Supreme Court has recognized that writ relief exists in order to prevent  
12 injustice. “[The writ’s] object is to restrain inferior courts from acting without authority of law in  
13 cases where wrong, damage, and injustice are likely to follow from such action.” *Gladys Baker*  
14 *Olsen Family Trust*, 110 Nev. at 552, 874 P.2d at 780-81(1994) (citing *Silver Peak Mines v.*  
15 *Second Judicial Dist.t Ct.*, 33 Nev. 97, 110 P. 503 (1910)). Here, resolving these jurisdictional,  
16 constitutional, and procedural issues now, before trial, is efficient, fair, and just.

18 **D. The Justice Court lacked jurisdiction because NRS 624.750(2)(a) is not a**  
19 **misdemeanor.**

20 The Justice Court lacks jurisdiction because the charged offense is not a misdemeanor  
21 under Nevada law. The reason is simple: misdemeanor fines are capped at \$1,000, no exceptions,  
22 and the \$4,000 maximum fine under NRS 624.750(2)(a),<sup>3</sup> far exceeds that statutory maximum  
23 for a misdemeanor offense. In Nevada a misdemeanor is defined by the classification statute,  
24 which provides that “Every crime punishable by a fine of not more than \$1,000, or by  
25 imprisonment in a county jail for not more than 6 months, is a misdemeanor.” NRS 193.120(3).  
26 What qualifies as a misdemeanor is definitional (based on the classification statute),

---

27 <sup>3</sup> For sake of simplicity, this argument focuses on the maximum \$4,000 fine under NRS  
28 624.750(2)(a), though the additional, potentially severe financial penalties described above,  
underscore that the charged offense is not a misdemeanor.

1 jurisdictional (determining whether the case will be heard in justice or district court), procedural  
2 (determining the process and defendant's rights), and substantive (establishing the maximum  
3 punishment).

4 In holding that it has jurisdiction over the charged offense, the Justice Court broadly  
5 interpreted the misdemeanor punishment statute while ignoring the classification statute defining  
6 a misdemeanor. More specifically, it concluded that the savings clause in the misdemeanor  
7 punishment statute does not "only operate as a savings clause," but also permits "the two  
8 statutes," referring to NRS 624.750(2)(a) and the misdemeanor punishment statute, "to be read in  
9 harmony with one another while still maintaining the classification of a first offense as a  
10 misdemeanor." MTD Order dated February 11, 2021, at 3. The Justice Court erred in  
11 expansively construing its own jurisdiction and interpreting the misdemeanor punishment statute  
12 in a way that conflicts with the classification statute and lacks textual and case law support.  
13  
14

15 1. Justice court jurisdiction is limited to misdemeanor offenses.  
16

17 The jurisdictional question turns on the definition of a misdemeanor in Nevada. Justice  
18 courts are "courts of limited jurisdiction" with jurisdiction over "all misdemeanors and no other  
19 criminal offenses." *See Parsons v. State*, 116 Nev. 928, 933, 10 P.3d 836, 839 (2000) (clarifying  
20 the justice courts' limited function in gross misdemeanor and felony cases); *see also* NRS  
21 4.370(3) ("Justice courts have jurisdiction of all misdemeanors and no other criminal offenses  
22 except as otherwise provided by specific statute."); *see State v. Frederick*, 129 Nev. 251, 253,  
23 299 P.3d 372, 374 (2013) (explaining Legislature's authority define the jurisdiction of the justice  
24 courts, which is limited to misdemeanors). A statute authorizing justice court jurisdiction must be  
25 strictly construed. *See Camino v. Lewis*, 52 Nev. 202, 284 P. 766, 767 (1930) ("Justice courts  
26 have peculiar and limited jurisdiction. The powers conferred upon them by a statute must be  
27 strictly pursued."). The Justice Court's expansive interpretation of its jurisdiction runs counter to  
28

1 the basic principle that it is a limited-jurisdiction court whose jurisdiction is to be strictly  
2 construed.

3  
4 2. The classification statute defines a misdemeanor offense.

5 The Justice Court’s first misstep was that it in focused on the misdemeanor punishment  
6 statute while ignoring the classification statute defining a misdemeanor. MTD Order, February  
7 11, 2021, at 1-3. The classification statute categorizes all criminal offenses into three baskets:  
8 felonies, gross misdemeanors, and misdemeanors. *See Frederick*, 129 Nev. at 253, 299 P.3d at  
9 374 (explaining that NRS 193.120 “set[s] forth three classifications of crimes—felony, gross  
10 misdemeanor, and misdemeanor). In plain, express terms, the classification statute provides that  
11 a misdemeanor fine cannot exceed \$1,000, no exceptions. NRS 193.120(3); *see Guzman v.*  
12 *Second Judicial Dist. Court*, 136 Nev. 103, 106, 460 P.3d 443, 447 (2020) (stating that the  
13 starting point for statutory interpretation is the statute’s plain language). A unique, definitional  
14 feature of misdemeanors is that they, unlike felonies and gross misdemeanors, are classified  
15 based on the maximum fine. *Compare* NRS 193.120(2) and (4) *with* NRS 193.120(3) (“Every  
16 crime punishable by a fine of not more than \$1,000, or by imprisonment in a county jail for not  
17 more than 6 months, is a misdemeanor”). The Justice Court failed to honor the express terms of  
18 the classification statute.

19 3. The classification and misdemeanor punishment statutes are consistent.

20 The Justice Court’s expansive interpretation of the “unless” clause in the misdemeanor  
21 punishment statute, NRS 193.150(1), conflicts with the classification statute, NRS 193.120(3).  
22 Like the classification statute, the misdemeanor punishment statute limits a misdemeanor fine to  
23 \$1,000 with one caveat: “unless the statute in force at the time of commission of such  
24 misdemeanor prescribed a different penalty.” NRS 193.150(1). The Nevada Supreme Court has  
25 recognized that this “unless” clause is a “savings” clause that merely codifies the rule that “the  
26 proper penalty is the penalty in effect at the time of the commission of the offense and not the  
27 penalty in effect at the time of sentencing.” *See State v. Second Judicial Dist. Court (Pullin)*, 124  
28

1 Nev. 564, 567, 188 P.3d 1079, 1081 (2008) (referring to the “savings statutes” incorporated into  
2 the misdemeanor punishment statute, NRS 193.150).

3 As a preliminary step in any statutory interpretation, the classification and misdemeanor  
4 punishment statutes must be read together, based on their plain language, and in harmony with  
5 each other. *See, e.g., Williams v. State Dept. of Corrections*, 133 Nev. 594, 596, 402 P.3d 1260,  
6 1262 (2017) (in interpreting statutes, courts must start with the “plain language” of the statute,  
7 interpret a statute “in harmony” with other statutes “whenever possible,” and avoid  
8 interpretations that “render[] language meaningless or superfluous”); *Williams v. Clark Cnty.*  
9 *Dist. Attorney*, 118 Nev. 473, 484-85, 50 P.3d 536, 543-44 (2002) (requiring courts to construe  
10 statutes in harmony so long as the construction does not violate legislative intent or create an  
11 absurd result). Harmonizing these statutes is a simple task: the classification and punishment  
12 statutes both cap misdemeanor fines at \$1,000. The “unless” clause in the misdemeanor  
13 punishment statute must do the same, meaning a court must apply the “law in effect at the time  
14 of commission of the crime,” *Pullin*, 124 Nev. at 567, 188 P. 3d at 1081, but cannot exceed a six-  
15 month jail term and/or a \$1,000 fine. Interpreting the “unless” clause to permit a “misdemeanor”  
16 fine that exceeds \$1,000, as the Justice Court did here, does violence to the text and important  
17 purpose of the classification statute.  
18  
19

20 4. The Justice Court’s interpretation of the “unless” clause lacks support.

21 The Justice Court got wrong what the misdemeanor punishment statute does and does not  
22 say. The “unless” clause cannot sensibly be read to operate as a “specific statute” exception,  
23 which is how the Justice Court construed it. Rather, the “unless” clause has long been interpreted  
24 to be a savings clause applied at sentencing. *See Pullin*, 124 Nev. at 567, 188 P.3d at 1081 (citing  
25 *Tellis v. State*, 84 Nev. 587, 445 P.2d 938 (1968) and detailing the “general savings statutes  
26 adopted in 1967” in the felony, gross misdemeanor, and misdemeanor punishment statutes). A  
27  
28

1 sentencing statute must be read in light of “other sentencing statutes,” paying close attention to  
2 textual distinctions. *See Williams v. State Dept. of Corrections*, 133 Nev. at 597-98, 402 P.3d at  
3 1263-64. As the Nevada Supreme Court stated in *Williams*, which addressed minor wording  
4 differences impacting parole eligibility, “[W]hen [the Legislature] includes particular language  
5 in one section of a statute but omits it in another ... this Court presumes that [the Legislature]  
6 intended a difference in meaning.” *Id.* (citing, inter alia, *Loughrin v. United States*, 573 U.S. 351,  
7 357, 134 S. Ct. 2384, 2390 (2014)). A savings clause and a “specific statute” exception are  
8 distinct statutory features, recognizable by their texts.

10 The Justice Court erred in interpreting the “unless” clause to do the work of both a  
11 savings clause and a specific statute exception: it is only a savings clause, which does not apply  
12 here. Each of the punishment statutes contains the same savings clause included in the  
13 misdemeanor punishment statute, which provides:

15 “unless the statute in force at the time of commission of such gross misdemeanor  
16 prescribed a different penalty.”

16 *See* NRS 193.130(1) (felony), NRS 193.140(1) (gross misdemeanor), and NRS 193.150(1)  
17 (misdemeanor). By its text, this provision addresses and is triggered by an intervening change in  
18 the law, *i.e.*, when “the statute in force at the time of commission prescribed a different penalty”  
19 than the law in effect at sentencing. The savings clause would become relevant only if Mr. Maffit  
20 is convicted *and* the penalty changes before his sentencing.

21 A “specific statute” exception is different in purpose and language: it directs a court to  
22 apply a specific statute “set forth elsewhere.” *See Pullin*, 124 Nev. at 568, 188 P.3d at 1082-83  
23 (discussing the felony punishment statute NRS 193.130(a)). As *Pullin* acknowledged, the felony  
24 punishment statute contains both a savings clause and a specific statute exception, as identified  
25 in bracketed and italicized text below:

27 Except when a person is convicted of a category A felony, and [specific statute  
28 exception:] *except as otherwise provided by specific statute*, a person convicted of a  
felony shall be sentenced to a minimum term and a maximum term of imprisonment

1 which must be within the limits prescribed by the applicable statute, [savings clause:]  
2 *unless the statute in force at the time of commission of the felony prescribed a different*  
3 *penalty.*

4 NRS 193.130(1) (bracketed text and emphasis added).<sup>4</sup> As this example shows, a savings clause  
5 and “specific statute” exception are neither the same nor interchangeable, and the legislature  
6 recognizes this, employing both in a statute when that is its intention. *Id.* Unlike the felony  
7 punishment statute, the misdemeanor punishment statute contains a savings clause, but no  
8 “specific statute” exception.

9 The Justice Court erred in construing the “unless” clause to allow a misdemeanor fine  
10 exceeding \$1,000.

11  
12 5. The charged offense is not a misdemeanor.

13 The Justice Court lacks jurisdiction over the charged offense because NRS 624.750(2)(a),  
14 which carries felony-level fines, is not a misdemeanor. The statutory conflict here cannot be  
15 resolved in favor of expanding the jurisdiction in the Justice Court, whose jurisdiction is limited  
16 and must be strictly construed. *Camino v. Lewis*, 52 Nev. at 284, P. at 767. When it comes to  
17 jurisdiction, courts look to the severity of the penalties, not the misdemeanor label. *See Ex Parte*  
18 *McGee*, 44 Nev. 23, 189 P. 622 (1920) (district court had jurisdiction over “misdemeanor”  
19 offense authorizing felony penalties). When it amended NRS 624.750, the Nevada Legislature  
20 could have taken action to allow the Justice Court to hear violations, for example, (1) by  
21 increasing the maximum fine for a misdemeanor in the classification statute, *see* NRS 193.120(3)  
22 (noting citing A.B. 418 (1981), which increased the maximum fine from \$500 to \$1,000); (2) by  
23 adding a specific statute exception to the classification statute allowing misdemeanors with fines  
24  
25

26  
27  
28 <sup>4</sup> The statute at issue in this case, NRS 624.750(2)(a), also contains a specific statute exception.  
*See* 624.750(2)(a) (“Except as otherwise provided in subsection 3 and *unless a greater penalty is*  
*otherwise provided by a specific statute ...*”).

1 over \$1,000; or (3) by specifically authorizing jurisdiction over the charged offense in the Justice  
2 Court, *see* NRS 4.370(3) (“Justice courts have jurisdiction of all misdemeanors and no other  
3 criminal offenses *except as otherwise provided by specific statute.*”) (emphasis added). The  
4 legislature took none these steps. While it retained the misdemeanor label in NRS 624.750(2)(a),  
5 there is simply no evidence that the legislature intended to expand the jurisdiction of the Justice  
6 Court or muddy the definition of a misdemeanor offense.

7  
8 The Justice Court lacks jurisdiction over the charged offense and should be prohibited  
9 from hearing the case

10  
11 **E. NRS 624.750(2)(a) violates due process.**

12  
13 NRS 624.750(2)(a) sends conflicting signals on whether it is a misdemeanor or a felony  
14 and that confusion violates due process in two distinct ways. The statute is unconstitutionally  
15 vague because neither courts, nor prosecutors, nor litigants can tell whether it is a misdemeanor  
16 or a felony. This creates a risk of arbitrary enforcement because it leaves to courts and  
17 prosecutors (instead of the legislature) the task of deciding how and where the defendant will be  
18 charged, tried, and punished. Further, it violates due process to deny a defendant facing felony-  
19 level penalties the same felony-level procedural safeguards applicable to felony offenses.

20  
21 1. NRS 624.750(2)(a) is unconstitutionally vague.

22  
23 NRS 624.750(2)(a) is unconstitutionally vague because it fails to provide notice of the  
24 court and procedure for determining guilt. “The Government violates the Due Process Clause when  
25 it takes away someone’s life, liberty, or property under a criminal law so vague that it . . . invites  
26 arbitrary enforcement.” *Johnson v. United States*, 576 U.S. 591, 597 (2015) (invalidating a clause  
27 of the Armed Career Criminal Act). “These principles apply not only to statutes defining elements  
28 of crimes, but also to statutes fixing sentences.” *Id.* (citing *United States v. Batchelder*, 442 U.S.

1 114, 123 (1979)). The fine range for a first offense, \$1,000 to \$4,000, spans all three crime  
2 classifications (misdemeanor, gross misdemeanor, and felony) and yet it is unclear if the charged  
3 offense should be adjudicated in justice court as a misdemeanor or in district court like other  
4 felonies.

5 Because NRS 624.750(2)(a) fails to specify the penalty, court, or process, it risks arbitrary  
6 enforcement by prosecutors and courts. A statute is unconstitutionally vague if it authorizes  
7 arbitrary and discriminatory enforcement. *See Chicago v. Morales*, 527 U.S. 41, 56 (1999); *see*  
8 *also Lapinski v. State*, 84 Nev. 611, 613, 446 P.2d 645, 646 (1968) (legislature unconstitutionally  
9 delegated to prosecutor the authority to decide the class of the offense). In *Lapinski*, the defendant  
10 was charged with felonious taking of a vehicle under a statute, NRS 205.272 (1967), that allowed  
11 the prosecutor to decide whether to charge the offense as a misdemeanor, gross misdemeanor, or  
12 felony. *Id.* at 612, 446 P.2d at 646. The Nevada Supreme Court held that a statute granting a  
13 prosecutor such discretion was an unconstitutional delegation of legislative power. *Id.* at 613, 446  
14 P.2d at 646 (“[T]he power to define crimes and penalties lies exclusively with the legislature.”);  
15 *see also United States v. Evans*, 333 U.S. 483, 486 (1948) (“[D]efining crimes and fixing penalties  
16 are legislative, not judicial, functions.”). Because Mr. Maffit faces penalties for the charged  
17 offense that range from misdemeanor to felony, allowing a prosecutor or court to decide which it  
18 is, without guidance from the legislature, creates risk of arbitrary enforcement.

19 This vagueness problem cannot be reconciled through judicial interpretation. *Johnson*,  
20 576 U.S. at 602 (citing *United States v. Evans*, 333 U.S. 483, 495 (1948) (invalidating statute  
21 that criminalized conduct without providing a penalty)). As the Court explained in *Evans*, only  
22 the legislature, not the courts, can dictate the penalty for a criminal offense. *Evans*, 333 U.S. at  
23 486; *see also Lapinski*, 84 Nev. at 613, 446 P.2d at 646 (“The power to define crimes and  
24 penalties lies exclusively in the legislature.”). Selecting one statutory provision over another  
25 would amount to a “guess at the revision [the legislature] would make.” *See United States v.*  
26 *Evans*, 333 U.S. 483, 486 (1948)). As in *Evans*, this Court is presented not with a statutory  
27 construction problem, but with a “multiple choice problem.” *Evans*, 333 U.S. at 484. For the  
28



1 Justice Court to have jurisdiction, a court would have to either reject the \$1,000 maximum fine  
2 for misdemeanors in the classification statute or reject the \$1,000-\$4,000 penalty provision in  
3 NRS 624.750(2)(a). Either of these options involves a court re-writing (not simply interpreting) a  
4 criminal statute and violates due process because it intrudes upon the exclusive province of the  
5 legislature to define offenses and fix penalties. *See Evans*, 333 U.S. at 485-86; *Lapinski*, 84 Nev.  
6 at 613, 446 P.2d at 646. Because NRS 624.750(2)(a) expressly provides that first offense  
7 contracting without a license is a misdemeanor, upgrading the charge to a felony offense violates  
8 due process. *See Chambers v. Mississippi*, 410 U.S. 284, 294 (1973) (explaining that due process  
9 includes a defendant's right to reasonable notice of a charge against him).

10 The vagueness problem also cannot be resolved through prosecutorial charging decisions,  
11 which invite arbitrary enforcement. *See Johnson v. United States*, 576 U.S. at 597; *Lapinski*, 84  
12 Nev. at 613, 446 P.2d at 646; *see also State v. Kopp*, 118 Nev. 199, 204, 43 P.3d 340, 343 (2002)  
13 (prohibiting the charging of misdemeanors and felonies in the same indictment or information).  
14 In *Kopp*, the Nevada Supreme Court held that allowing justice and district courts to exercise  
15 concurrent jurisdiction over misdemeanor offenses would conflict with the Nevada Constitution,  
16 which vests the legislature, not prosecutors, with the power to decide which courts have  
17 jurisdiction over misdemeanor and felony charges. *See Kopp*, 118 Nev. at 204, 43 P.3d at 343.

18 Because there is no judicial solution here other than dismissal, Mr. Maffit urges this  
19 Court to grant a writ a prohibition or mandamus to that effect.  
20

21 2. It violates due process to expose a defendant to felony-level fines without felony-  
22 level protections.

23 As a matter of due process, Mr. Maffit is entitled to the same procedural safeguards  
24 afforded felony defendants under state and federal law. *See Wilkinson v. Austin*, 545 U.S. 209,  
25 221 (2005) (recognizing that protected liberty interests may arise “from the Constitution itself,  
26 by reason of guarantees implicit in the word ‘liberty,’ . . . or it may arise from an expectation or  
27  
28

1 interest created by state laws or policies” (internal citation omitted)); U.S. Const. amends. V,  
2 XIV; Nev. Const. art. I, § 8.

3 Criminal fines can amount to serious punishment and thus trigger constitutional scrutiny  
4 and protections. Excessive fines are expressly prohibited by the Eighth Amendment, which the  
5 Supreme Court recently applied to states via the Fourteenth Amendment. *See Timbs v. Indiana*,  
6 139 S. Ct. 682, 689-90 (2019) (recognizing that the Excessive Fines Clause is “fundamental to  
7 our scheme of ordered liberty” and “deeply rooted in this Nation’s history and tradition”).  
8 Exposure to high fines triggers procedural protections, as the Supreme Court explained in  
9 *Southern Union Co. v. United States*, 567 U.S. 343, 349-50 (2012), which held that the rule in  
10 *Apprendi v. New Jersey* applies to criminal fines. *Id.* (citing *Apprendi v. New Jersey*, 530 U.S.  
11 466, 490 (2000), which held that a defendant has a Sixth Amendment right to jury trial on  
12 sentencing facts that increase the statutory maximum punishment). “[W]e have never  
13 distinguished one form of punishment from another,” the Supreme Court reasoned in *Southern*  
14 *Union*, so the constitutional protection afforded by *Apprendi* applies “whether the sentence is a  
15 criminal fine or imprisonment or death.” *Id.*

16 In felony prosecutions in Nevada, the accused receives far greater protections than those  
17 accused of misdemeanors, including a preliminary hearing, right to counsel, jury trial, a twelve-  
18 person jury, and a right to appeal to the Nevada Supreme Court.<sup>5</sup> Many of these are federal  
19 constitutional rights. *See, e.g., Gideon v. Wainwright*, 372 U.S. 335, 344 (1963) (right to  
20  
21  
22  
23  
24

---

25 <sup>5</sup> *See e.g.*, NRS 173.035 (requiring preliminary hearing for felony and gross misdemeanor  
26 charges); NRS 178.397 (providing right to counsel to those charged with a felony and gross  
27 misdemeanor); NRS 175.011 (providing district court trials “must” be tried by jury); NRS  
28 175.021 (providing juries “must” consist of 12 jurors unless the trial takes place in justice court,  
in which case the jury “must consist of six jurors”); NRS 177.015((1)(a) (vesting the district  
court with final appellate jurisdiction over a final judgment of the justice court).

1 appointed counsel in felony cases); *Duncan v. Louisiana*, 391 U.S. 145, 158 (1968) (right to jury  
2 trial for non-petty offenses).

3 In every other context, a defendant like Mr. Maffit, who faces felony-level fines, is  
4 guaranteed far greater procedural protections under the U.S. Constitution, the Nevada  
5 Constitution, and Nevada statutes. Denying him these protections here would deny him due  
6 process.

7  
8 **F. Mr. Maffit is entitled to a jury trial because contracting without a license is a  
9 “serious” offense.**

10 Contracting without a license is a “serious offense” that entitles Mr. Maffit to a jury trial  
11 under the Nevada and the U.S. Constitutions. Nev. Const. Art. 1 § 3; U.S. Const. Amend. 6. *See*  
12 *Blanton v. City of N. Las Vegas*, 489 U.S. 538 (1989); *See Andersen v. Eighth Judicial District*  
13 *Court in and for County of Clark*, 135 Nev. 321, 322-324 (2019) (holding defendant charged  
14 with misdemeanor domestic violence has a right to jury trial). While an offense punishable by a  
15 maximum six-month term of imprisonment is “presumptively petty,” that presumption can be  
16 overcome if “additional statutory penalties” viewed in conjunction with possible incarceration,  
17 “are so severe that they clearly reflect a legislative determination that the offense in question is a  
18 serious one.” *Id.* at 323. In *Andersen*, the Court held that misdemeanor domestic violence was a  
19 “serious” offense entitling a defendant to jury trial because a convicted individual would lose his  
20 right to possess a firearm under Nevada and federal law. *Id.* at 323-324 (citing NRS 202.360).  
21 Here Mr. Maffit faces severe, potentially excessive financial penalties if convicted the charge  
22 offense. Because these severe penalties reflect that the Nevada Legislature considers this a  
23 “serious” offense, he has a right to jury trial.  
24  
25

26 //

27 //

1           1. The charged offense is “serious” for purposes of the Sixth Amendment.

2           The severe financial punishments for the charged offense reflect that the Nevada  
3 Legislature considers it a serious offense. To determine whether an offense is “serious” for  
4 purposes of the right to jury trial, “[t]he best indicator of society’s views is the maximum penalty  
5 set by the legislature.” *See Andersen*, 135 Nev. at 323-324 (quoting *United States v. Nachtigal*,  
6 507 U.S. 1, 3 (1993)). This inquiry focuses on “*whether a particular legislature deemed a*  
7 *particular offense ‘serious.’*” *Id.* (emphasis original) (quoting *Nachtigal*, 507 U.S. at 4 and  
8 *Blanton*, 489 U.S. at 545 n.11).

9           Similar to *Andersen*, the 2015 amendments to NRS 624.750 transformed the charged  
10 offense from a routine misdemeanor to a serious offense. *Andersen*, 135 Nev. at 323-324. In  
11 *Andersen*, the Nevada Supreme Court found it significant that the Nevada Legislature had in 2015  
12 added the loss of the right to bear a firearm as a penalty for first offense domestic violence. *Id.*  
13 This “new penalty,” the Court explained, “clearly reflect[s] a legislative determination that the  
14 offense [of misdemeanor domestic battery] is a serious one.” *Id.* at 323-324. Before the 2015  
15 amendments the charged offense was a routine misdemeanor punishable by “a fine of not more  
16 than \$1,000.” *See* A.B. 137, 2015 Leg., 78th Sess. at 5 (Nev. 2015) (noting amendments). Today  
17 it is a serious offense: In addition to a possible six months in jail, NRS 624.750(2)(a), Mr. Maffit  
18 faces severe, cumulative criminal fines, including a \$4,000 fine, NRS 624.750(2)(a), an uncapped  
19 “fine enhancement,” NRS 624.750(3), plus costs, damages, and an administrative fine, *see* NRS  
20 624.710(1); NRS 624.700. The possible criminal penalties far exceed the \$1,000 statutory  
21 maximum fine for misdemeanors. *See* NRS 193.120(3), NRS 193.150(1).

22           The “increased fine structure” reflects the Nevada Legislature’s penal goal of punishing  
23 this offense more harshly in order to deter violations. *See Minutes of the Nev. St. Legislature:*  
24 *Hearing on Assembly Bill No. 137 Before the Assembly Comm. on Com. and Lab.*, 2015 Leg., 78th  
25

1 Sess. 4 (April March 2, 2015). The bill sponsor, Assemblyman John Ellison, justified the need for  
2 more severe fines with an example of an unlicensed contractor who won a bid over two licensed  
3 contractors for a \$160,000 project, “paid the \$250 fine,” and “went on to his next project.” *Id.* at  
4 5. Assemblyman Ellison added: “*That is the reason we are trying to put some teeth into this.*” *Id.*  
5 (emphasis added). As a first offense, that example could result in a misdemeanor conviction  
6 resulting in \$20,000 in criminal fine (a \$4,000 fine plus a \$16,000 fine enhancement), *i.e.*, twenty  
7 times the maximum \$1,000 fine for a routine misdemeanor. The legislature intentionally increased  
8 these financial penalties to make this a more serious offense.  
9

10  
11 2. The risk of excessive fines reflects that the charged offense is “serious.”

12 That Mr. Maffit’s potential punishment involves high fines rather than a state prison  
13 sentence or firearm ban does not diminish the seriousness of the punishment. The Supreme Court  
14 has made clear that criminal fines are serious punishments that are subject to meaningful  
15 constitutional limits under the Eighth Amendment.  
16

17 The severe penalties for contracting without a license, if imposed, could violate the  
18 Excessive Fines Clause of the Eighth Amendment. *See Timbs v. Indiana*, 139 S. Ct. 682,  
19 687 (2019) (incorporating Eighth Amendment’s Excessive Fines Clause on the states). As  
20 *Timbs* reinforces, the Excessive Fines Clause is a powerful indicator that fines are a “serious”  
21 form of punishment. *See Timbs*, 139 S. Ct. 682 at 687 (recognizing that state court finding the  
22 civil forfeiture of the defendant’s SUV, recently purchased for \$42,000, was grossly  
23 disproportionate to the maximum \$10,000 fine for his felony conviction). *Id.*; *see also Las Vegas*  
24 *v. Nev. Indus.*, 105 Nev. 174, 178 (1989) (invalidating municipal ordinance lacking maximum  
25 fine due to “the great risk of excessive fines resulting from enforcement,” citing Nev. Const.,  
26 Art. I, § 6). The risk of excessive fines confirms the that the penalties imposed on contracting  
27 without a license are serious.  
28

1 The clear constitutional limit on financial penalties in criminal cases signals their  
2 seriousness, and thus points to the likelihood that fine amounts exceeding the limit set forth in  
3 the misdemeanor classification statute require a jury trial.

4 **II.**

5 **CONCLUSION**

6 For the reasons stated, Mr. Maffit urges this Court to enter a writ of prohibition or  
7 mandamus dismissing the charged offense for lack of jurisdiction in the Justice Court and/or  
8 because NRS 624.750(2)(a) violates due process. Alternatively, if the case proceeds in Justice  
9 Court, Mr. Maffit urges this Court to grant a writ of mandamus recognizing his right to jury trial  
10 on the charged offense.  
11

12 DATED this 9th day of July, 2021.  
13

14  
15 BY: /s/ Anne R. Traum  
16 M. EVE HANAN, ESQ.  
17 NEVADA BAR NO. 14678C  
18 ANNE R. TRAUM, ESQ.  
19 NEVADA BAR NO. 7939  
20  
21  
22  
23  
24  
25  
26  
27  
28

STATE OF NEVADA )  
 )  
COUNTY OF CLARK )

1. Your declarant is an Attorney at Law duly licensed to practice in all courts in the State of Nevada;
2. Your declarant is the Attorney of record for the Defendant herein;

FURTHER YOUR DECLARANT SAYETH NAUGHT.

# Exhibit 1

Order, February 11, 2021



IN THE JUSTICE COURT OF THE LAS VEGAS TOWNSHIP  
COUNTY OF CLARK, STATE OF NEVADA

FILED  
2021 FEB 11 P 12:16

JUSTICE COURT  
LAS VEGAS NEVADA

BY *Sweetbay*

THE STATE OF NEVADA,

Plaintiff,

vs.

DAVID CHARLES MAFFIT #1302219

Defendant.

CASE NO.: 19M23460X  
DEPT. 12

ORDER DENYING  
DEFENDANT'S MOTION TO DISMISS  
THE CRIMINAL COMPLAINT DUE TO  
LACK OF JURISDICTION AND  
VIOLATION OF DUE PROCESS

PROCEDURAL BACKGROUND

On November 13, 2019 the State of Nevada charged Defendant David Maffit with the misdemeanor crime of Engaging in Business without a Contractor's License under NRS 624.750(2)(a). The operative date of the alleged offense is July 23, 2018. The Defendant is represented by the Boyd Misdemeanor Legal Clinic, specifically Anne Traum, Esq. and Eve Hanan, Esq.. On September 2020 the Defendant filed a Demand for Jury Trial. After receiving briefing the issue of whether the Defendant has a right to a jury trial under Nevada law, this Court denied Defendant's request for a jury trial.

On December 1, 2020 the Defendant filed the instant Motion to Dismiss, in essence arguing that because of the potential fine associated with a conviction of this crime under NRS 624.750(2)(a), this crime should not be classified as a misdemeanor and thus the Criminal Complaint should be dismissed and/or that this Court lacks jurisdiction over the crime.

...

**DECISION**

This Court has reviewed the Defendant's Motion to Dismiss, the State's Opposition thereto, and the Defendant's Reply, as well as the case law cited within said written arguments. This Court acknowledges that the primary governing statute of NRS 193.150 providing the punishment for misdemeanor crimes provides in pertinent part:

1. Every person convicted of a misdemeanor shall be punished . . . by a fine of not more than \$1,000 . . . , unless the statute in force at the time of the commission of such misdemeanor prescribed a different penalty.

The Legislature defined this particular crime (first offense) as a misdemeanor in NRS 624.750(2)(a). Prior to the 2015 Legislative Session, the maximum fine for the misdemeanor crime of Engaging in Business without a License was \$1,000. In 2015, however, the Legislature modified the fine amount to a minimum of \$1,000 and a maximum of \$4,000. It is true that this amendment significantly increased the fine for a first offense. It is also true, though, that at that same time the Legislature did not modify classification of the crime.

The Defendant argues that NRS 193.150 provides a maximum fine of \$1,000 for all misdemeanors **with no exceptions**. (Motion, pg. 4:15-16.) That is not the case. The plain language of NRS 193.150 includes exception language of "unless the statute in force at the time of the commission of such misdemeanor prescribed a different penalty." While this Court understands that the Defendant's argument is that this excepting language *only* operates as a savings clause, there is no such evidence that the Legislature intended the excepting language to be so narrow in scope.

While a court should not legitimize two conflicting statutes that lead to absurd or unreasonable results, the reading of these two statutes together does not lead to such a result. It is clear from the 2015 legislative history of NRS 624.750(2)(a) that the Legislature intended that the financial punishment for this crime be more serious than it had been, primarily for deterrence effect. It is worth




1 noting that while the Legislature had the perfect opportunity at that time to also increase the potential  
2 jail time associated with this crime – for example, enact a minimum amount of jail as punishment for  
3 the crime – it chose not to do so. Thus, it appears that the Legislature’s sole desire was to increase the  
4 financial penalties for a conviction of a first offense to help deter future infractions. The Defendant’s  
5 arguments that the statutes constitute a violation of his due process are likewise unconvincing.  
6

7 In summary, this Court does not interpret the excepting language of NRS 193.150 to *only*  
8 operate as a savings clause. In light of the excepting language outlined in NRS 193.150, the two  
9 statutes *can* be read in harmony with one another while still maintaining the classification of a first  
10 offense as a misdemeanor. Thus, this Court does in fact have jurisdiction over the crime pursuant to  
11 NRS 4.370.  
12

13 For the foregoing reasons, the Defendant’s Motion to Dismiss is **DENIED**. At the mutual  
14 request of the parties this case will be set for status check on **Thursday, February 25, 2021 at 11:00**  
15 **am by telephone or Blue Jeans**. A bench trial date will be set at the status check if the case has not  
16 been resolved.  
17

18 IT IS SO ORDERED this 11<sup>th</sup> day of February, 2021.

19  
20   
21 JUDGE DIANA L. SULLIVAN  
22 LAS VEGAS JUSTICE COURT  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on the 11<sup>th</sup> day of February, 2021, the foregoing **ORDER DENYING DEFENDANT'S MOTION TO DISMISS THE CRIMINAL COMPLAINT DUE TO LACK OF JURISDICTION AND VIOLATION OF DUE PROCESS** was served on the party(ies) by emailing a copy of same addressed as follows:

Jacob J. Villani, Chief Deputy District Attorney  
Email: [jacob.villani@clarkcountyda.com](mailto:jacob.villani@clarkcountyda.com)

M. Eve Hanan, Esq.  
Email: [Eve.hanan@unlv.edu](mailto:Eve.hanan@unlv.edu)

Anne R. Traum, Esq.  
Email: [Anne.traum@unlv.edu](mailto:Anne.traum@unlv.edu)



Maureen Lowe  
An Employee of the Las Vegas Justice Court

# Exhibit 2

Transcript of Hearing, October 6, 2020

1 DEPT. NO. 12

2  
3 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP

4 COUNTY OF CLARK, STATE OF NEVADA

5  
6 STATE OF NEVADA,

7 Plaintiff,

8 vs.

Case No. 19M23460X

9 DAVID CHARLES MAFFIT,

10 Defendant.

---

11  
12  
13 REPORTER'S TRANSCRIPT  
14 OF  
15 PROCEEDINGS

16 BEFORE THE HONORABLE DIANA L. SULLIVAN  
17 JUSTICE OF THE PEACE

18 TAKEN ON TUESDAY, OCTOBER 6, 2020  
19 AT 9:00 A.M.

20 APPEARANCES:

21 For the State:

JOHN TORRE  
Deputy District Attorney

22 For the Defendant:

23 ANN TRAUM and  
JUSTIN BERKMAN (student)  
(telephonically)

24 Reported by: Gerri De Lucca, C.C.R. #82  
25 Official Court Reporter

1 LAS VEGAS, NEVADA, TUESDAY, OCTOBER 6, 2020

2 \* \* \* \* \*

3  
4 THE COURT: David Maffit, 19M23460.

5 Hi. Can you state your appearance  
6 for the record, please.

7 MR. BERKMAN: Good morning, Judge  
8 Sullivan. I'm Justin Berkman here representing  
9 Mr. Maffit under Nevada Supreme Court Rule 49.3 under  
10 the supervision of Professors Traum and Hanan.

11 THE COURT: Thank you.

12 Mr. Torre, are you handling this?

13 MR. TORRE: Yes, your Honor.

14 THE COURT: Thank you.

15 So I received defendant's demand  
16 for jury trial, I received the State's opposition to  
17 demand for jury trial, and I have received the reply  
18 in support of demand for jury trial.

19 I have considered all of the  
20 arguments and is there anything either party wants to  
21 add before I make my decision?

22 MR. BERKMAN: Sure, your Honor.

23 THE COURT: Pardon?

24 MR. BERKMAN: Yes, your Honor.

25 THE COURT: Okay.

1                   MR. BERKMAN: So the issue before the  
2 Court today is whether contracting without a license  
3 is a serious offense. If it is, then Mr. Maffit is  
4 entitled to a jury trial.

5                   In Anderson the Nevada Supreme  
6 Court tells that the legislature's view of the  
7 seriousness of the offense is how the Court  
8 determines seriousness. When the penalties for this  
9 offense were heightened in 2015 the bill sponsor said  
10 that the legislature wanted to add teeth to this  
11 showing that the legislature intended to make the  
12 offense serious.

13                   In using Nevada standard of a  
14 thousand dollar maximum fine for misdemeanor as the  
15 benchmark for the legislature's (inaudible), the  
16 legislature clearly intended this offense to be  
17 serious.

18                   Here the maximum fine is four  
19 times the statutory maximum of the standard  
20 misdemeanor and more importantly the 10 percent fine  
21 enhancement of the value of any contact is only  
22 capped. There is no maximum fine.

23                   THE COURT: Is there anything the State  
24 wants to add?

25                   MR. TORRE: Your Honor, we'll submit it



1 on the written opposition filed by Mr. Villani.

2 THE COURT: So, Mr. Berkman, I mean I  
3 don't know if you would agree or disagree with this  
4 but if the legislature intended it to be a serious  
5 crime, the legislature had apt opportunity to make it  
6 a serious crime. In other words enhance it to a  
7 gross misdemeanor or a felony at first obviously. We  
8 know that the subsequent offenses are enhanceable --

9 MR. BERKMAN: Right.

10 THE COURT: -- but if they really wanted  
11 to make it a serious offense in the eyes of the law,  
12 couldn't they have just made it a gross misdemeanor  
13 or a felony at that time?

14 MR. BERKMAN: They could, your Honor, but  
15 like in Anderson an offense can be both a misdemeanor  
16 and serious. In looking at the legislature's intent  
17 here with the fine in their own statement we can see  
18 that the legislature intended this offense to be  
19 serious.

20 THE COURT: So in Anderson they  
21 considered it a serious crime because a  
22 constitutional right was being taken away by the  
23 defendant if they were convicted of the misdemeanor,  
24 that being the right to bear arms.

25 So what is it, is it just the fact

1     that the fine, is it your argument that it's just the  
2     fact that the fine can go up to \$4,000 that would  
3     make it serious enough to provide for a jury trial  
4     right?

5                 MR. BERKMAN: Right, so the rule from  
6     Anderson isn't that a constitutional right has to be  
7     implicated for an offense to be serious. Again  
8     seriousness is based on the legislature's view of  
9     seriousness.

10                In looking at their standard of a  
11     benchmark of a thousand dollar fine maximum to have a  
12     legislature (inaudible) in the legislature's own  
13     words, we can determine that the legislature clearly  
14     intended this offense to be serious.

15                THE COURT: Okay. My last question is  
16     you mentioned in your briefing of the issue of  
17     excessive fines and that being one factor, if you  
18     will, to then make it a serious charge.

19                In the review of the legislative  
20     history, which I didn't review it word for word but I  
21     looked through it and reviewed some of it, they  
22     basically arrived at a range of fines, that being a  
23     thousand dollars, which is up to the typical amount  
24     for the typical misdemeanor, if you will, up to  
25     \$4,000.

1                   And it seemed to me that the  
2       discussion of the legislative intent had to do with  
3       the reason why there was a range of fines being  
4       legislated or imposed in the bill is that it might  
5       depend on the amount of the contract.

6                   So, for instance, I think, I don't  
7       know this exact example was given but as an example,  
8       if the contract is \$20,000 worth of work, then maybe  
9       a lower fine such as a thousand dollars would be  
10      warranted, but if the contract is a million dollars  
11      worth of work and the defendant received a lot more  
12      remuneration, for instance, under a million dollar  
13      contract, then maybe an enhanced fine would be more  
14      appropriate.

15                  And in that instance I don't know  
16      how it would be accepted. If you had a defendant,  
17      for instance, that contracted for a million dollars  
18      worth of work received, oh, I don't know, a hundred  
19      thousand dollars down and then gets fined 4,000 do  
20      you believe that's still excessive?

21                  MR. BERKMAN: The issue of excessive  
22      fines here it just reflects the seriousness of the  
23      offense. So in Duncan the seriousness isn't  
24      determined by the defendant's actual sentence but by  
25      the authorized maximum sentence. And because a fine

1 can be imposed to 10 percent of the value of any  
2 contract, the fine here, the maximum authorized  
3 sentence is uncapped. So that clearly shows that the  
4 legislature intended this offense to be serious.

5 THE COURT: Is there anything Mr. Torre  
6 wants to add?

7 MR. TORRE: No, your Honor.

8 THE COURT: All right. I do not believe  
9 that the range of fine of \$1,000 to \$4,000 makes this  
10 charge so serious that it warrants a jury trial or  
11 that it warrants a jury right.

12 I believe that if the legislature  
13 wanted to make it a serious offense entitling the  
14 defendant to a jury trial, then they could have made  
15 it a gross misdemeanor or a felony.

16 So the defendant's demand for jury  
17 is denied. Thank you.

18 Do we have a trial date? We need  
19 a bench trial date.

20 MS. TRAUM: Your Honor, can I ask for one  
21 qualification of your ruling?

22 THE DEFENDANT: Yes.

23 MS. TRAUM: Are you also ruling that an  
24 uncapped fine is not a serious offense, because that  
25 is what we have in the legislative penalty here is

1 uncapped, a 10 percent fine is an uncapped amount on  
2 the total amount of the contract. There's no  
3 statutory limitation on that. I just want to clarify  
4 that you're also saying that's not serious.

5 THE COURT: Yes, I am. And I don't know  
6 if that's right, wrong, or indifferent, but a similar  
7 issue that we have sometimes in court and it was  
8 mentioned in your briefing was restitution and to me  
9 this is an issue that is unclear with the legislature  
10 and unfortunately the Justice Court has to deal with  
11 it because sometimes the negotiation, and I'm just  
12 saying on any other case, the negotiation might be  
13 plead guilty to a misdemeanor but I've had it before  
14 believe it or not \$200,000 in restitution.

15 So the question for the courts,  
16 which is very unclear in the legislature, is at what  
17 point should we not be sentencing people to \$200,000  
18 in restitution. I mean that might be serious enough  
19 where that needs to be handled by the District Court.

20 So I understand your issue with  
21 the 10 percent of fine, so that's different from  
22 restitution, but it's still kind of the struggle for  
23 the courts at least, for the limited jurisdiction  
24 courts is how much is too much, whether it be a fine  
25 or whether it be restitution for instance.

1 I mean your argument could have  
2 been similar and maybe it was to some extent in your  
3 motion that to the extent restitution is being  
4 claimed, let's just say in this particular type of  
5 case up of \$200,000, does that then make the crime  
6 serious enough for a jury right.

7 Unfortunately the legislature  
8 hasn't been very clear on that. So I've made my  
9 decision that that coupled with I don't believe in  
10 this case and I would have to refer to the file,  
11 Miss Clerk, can I refer to the file, that the State  
12 would be seeking jail time.

13 So your argument and I appreciate  
14 your argument is the range of the fine and the  
15 10 percent cap. So the motion is denied based upon  
16 that argument.

17 Do we want a bench trial or what  
18 do you want to do?

19 MS. HANAN: We'll need to discuss with  
20 our client whether he'd like to appeal this. So we  
21 could, whatever the Court decides, set a trial date.  
22 We may need to stay it or we can put it on for a  
23 status date if that makes more sense for the Court's  
24 schedule.

25 THE COURT: Why don't we do this. To

1 keep the ball moving down the field why don't we set  
2 a trial date. It's going to be in early December  
3 anyway because that's my ordinary course, if that's  
4 okay, and then if your client decides to file a writ,  
5 then just use a setting slip once you file the writ,  
6 if you file the writ, use a setting slip to put it on  
7 my calendar to say, hey, we have filed a writ, please  
8 vacate the trial date and stay the proceedings.

9 Other than that, we'll just keep  
10 moving the ball down the field.

11 MS. HANAN: Thank you, your Honor.

12 THE COURT: All right. So here's a bench  
13 trial date in the ordinary course. Thank you.

14 MR. BERKMAN: Thank you, Judge Sullivan.

15 THE CLERK: December 8 at 9 a.m.

16 ---o0o---

17 ATTEST: Full, true and accurate transcript of  
18 proceedings.

19 /s/GERRI DE LUCCA  
20 GERRI DE LUCCA, C.C.R. NO. 82  
21  
22  
23  
24  
25

1 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP

2 COUNTY OF CLARK, STATE OF NEVADA

3  
4 STATE OF NEVADA,

5 Plaintiff,

6 vs.

7 DAVID CHARLES MAFFIT,

8 Defendant.

Case No. 19M23460X

ATTEST RE: NRS 239B.030

9 -----  
10  
11 STATE OF NEVADA )  
12 ) SS  
13 COUNTY OF CLARK )

14 I, Gerri De Lucca, a Certified Shorthand  
15 Reporter within and for the County of Clark and the  
16 State of Nevada, do hereby certify:

17 That REPORTER'S TRANSCRIPT OF PROCEEDINGS  
18 was reported in open court pursuant to NRS 3.360  
19 regarding the above proceedings in Las Vegas Justice  
20 Court, 200 Lewis Avenue, Las Vegas, Nevada.

21 That said TRANSCRIPT:  
22 \_\_X\_\_ Does not contain the Social Security  
23 number of any person.

24 ----- Contains the Social Security number  
25 of a person.



1                    ---o0o---

2        ATTEST:   I further certify that I am not interested  
3        in the events of this action.

4                    /s/GERRI DE LUCCA  
5                    GERRI DE LUCCA, C.C.R. NO. 82

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Writ of Mandamus****COURT MINUTES****November 18, 2021**

A-21-837620-W      Nevada State of, Plaintiff(s)  
                                  vs.  
                                  David Maffit, Defendant(s)

**November 18, 2021      3:00 AM      Decision**

**HEARD BY:** Kierny, Carli**COURTROOM:** Chambers**COURT CLERK:** Grecia Snow**REPORTER:****PARTIES****PRESENT:**

**JOURNAL ENTRIES**

- The Petition for Writ of Mandamus and/or Prohibition came before the Court for oral argument on November 3, 2021. At that time, the Court took the matter under advisement. After reviewing the pleadings on file and entertaining arguments of counsel, the Court hereby DENIES the Petition for Writ of Mandamus and/or Prohibition. Pursuant to NRS 193.120, the Court finds the Justice Court had jurisdiction because the charged offense is a misdemeanor. The Court further finds that pursuant to NRS 624.750(a) and NRS 193.150(1), the charged offense of Contracting without a License is a misdemeanor that does not rise to the level of seriousness for a jury trial. In Andersen v. Eighth Judicial District Court, the Court held that to determine whether an offense is serious for purposes of the right to jury trial, the best indicator of society's views is the maximum penalty set by the legislature. 135 Nev. 321, 323 (2019). Unlike in Anderson, where the Court held that misdemeanor domestic violence was a serious offense entitling a defendant to jury trial because a convicted individual would lose his fundamental right to possess a firearm under Nevada and federal law, Mr. Maffit would not be losing a fundamental right when charged with Contracting without a License. Additionally, the Court finds that, pursuant to NRS 193.150, the Court is to look to the law in effect at the time of the offense of such misdemeanor. Here, the Court looks to NRS 624.750(a), which went into effect in 2015. As such, the pertinent statute applies in the instant case and prescribes a range of \$1,000 to \$4,000 as a fine amongst other penalties. Accordingly, since such fines are statutorily permissible, the Court finds that Justice Court retained proper jurisdiction over the instant case. Therefore, the Court DENIES Defendant's Petition for Writ of Mandamus and/or Prohibition.

PRINT DATE: 01/28/2022

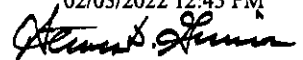
Page 1 of 2

Minutes Date: November 18, 2021

Counsel for the State to prepare an Order consistent with this Minute Order and its Answer and show it to opposing counsel prior to submitting the same to Chambers.

CLERKS NOTE: This Minute Order was electronically served by Courtroom Clerk, Grecia Snow, to all registered parties for Odyssey File & Serve. 11/18/21 gs

CLERKS NOTE: This Minute Order was amended to reflect correct party to prepare the Order. 1/28/22 gs

  
CLERK OF THE COURT

**FCL**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**TYLER SMITH**  
Chief Deputy District Attorney  
Nevada Bar #011870  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

**DAVID CHARLES MAFFIT**

Petitioner,

vs.

**JUSTICE COURT, LAS VEGAS**  
**TOWNSHIP, CLARK COUNTY,**  
**NEVADA, AND THE HONORABLE**  
**DIANA SULLIVAN JUSTICE OF THE**  
**PEACE**

Respondents,

And

**THE STATE OF NEVADA,**  
Real Party in Interest.

**CASE NO: A-21-837620-W**

**DEPT NO: III**

**FINDINGS OF FACT, CONCLUSIONS OF**  
**LAW AND ORDER DENYING PETITION FOR WRIT OF MANDAMUS**

**DATE OF HEARING: NOVEMBER 3, 2021**  
**TIME OF HEARING: 8:30 AM**

THIS CAUSE having come on for hearing before the Honorable MONICA TRUJILLO, District Judge, on the 3rd day of November, 2021, the Petitioner not being present, represented by Mia Bacher appearing in accordance with Nevada Supreme court Rule 49.3 under the supervision of Anne Traum and Eve Hanan, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through TYLER SMITH, Chief Deputy District Attorney, and the Court having considered the matter, including briefs,

1 transcripts, arguments of counsel, and documents on file herein, now therefore, the Court  
2 makes the following findings of fact and conclusions of law:

3 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

4 1. A writ of mandamus may issue "to compel the performance of an act which the  
5 law requires as a duty resulting from an office or where the discretion has been manifestly  
6 abused or exercised arbitrarily or capriciously. A writ will not be issued when the petitioner  
7 has a plain, speedy and adequate remedy in the ordinary course of law." *Hildt v. Eighth Jud.*  
8 *Dist. Ct. in & for Cty. of Clark*, 137 Nev. Adv. Op. 12, 483 P.3d 526, 529 (2021) (internal  
9 citations and quotations omitted); see also NRS 34.170.

10 2. A writ of mandamus is an extraordinary remedy, the decision to entertain a  
11 petition for the writ lies within the discretion of this Court. *Hickey v. District Court*, 105 Nev.  
12 729, 731, 782 P.2d 1336, 1338 (1989). In deciding whether to exercise that discretion, the  
13 court may consider, among other things, whether the petition raises an important issue of law  
14 that needs clarification. *Gonzalez v. Dist. Ct.*, 129 Nev. 215, 217, 298 P.3d 448, 449-50 (2013).

15 3. The Court finds that pursuant to NRS 193.120 the Justice Court has jurisdiction  
16 because the charged offense of Contracting without a License constitutes a misdemeanor  
17 offense.

18 4. NRS 193.150(1) states: Every person convicted of a misdemeanor shall be  
19 punished by imprisonment in the county jail for not more than 6 months, or by a fine of not  
20 more than \$1,000, or by both fine and imprisonment, unless the statute in force at the time of  
21 commission of such misdemeanor prescribed a different penalty.

22 5. NRS 624.750(a), which went into effect in 2015, provides the penalty for  
23 Contracting without a License and states: (a) For a first offense, is guilty of a misdemeanor  
24 and shall be punished by a fine of not less than \$1,000 nor more than \$4,000, and may be  
25 further punished by imprisonment in the county jail for not more than 6 months.

26 6. The Court looks to *Andersen v. Eighth Judicial District Court*, 135 Nev. 321,  
27 323 (2019) where the Nevada Supreme Court held that to determine whether an offense is  
28

1 serious enough to require a jury trial this Court should look to the maximum penalties set by  
2 the legislature.

3 7. Unlike in Andersen, supra, where the Court held that the misdemeanor offense  
4 of Battery Constituting Domestic Violence was a serious offense requiring a jury trial because  
5 such a conviction would result in a defendant losing his or her constitutional right to possess  
6 a firearm under Nevada and federal law, Petitioner in the instant case is not in jeopardy of  
7 losing a constitutional and/or fundamental right if convicted of Contracting without a License.  
8 Moreover, Petitioner's conclusory argument that the maximum allowable fine proscribed for  
9 the offense is excessive and therefore requires a jury trial is not persuasive.

10 8. The Court finds that, pursuant to the proscribed maximum penalties in NRS  
11 624.750(a) and NRS 193.150(1), the crime of Contracting without a License is not deemed a  
12 "serious offense" which would require a jury trial.

13 9. The Court finds that since the offense of Contracting without a License has been  
14 deemed misdemeanor offense by the Nevada Legislature and the proscribed penalty in NRS  
15 624.750(a) includes a fine of a minimum of \$1,000 and maximum of \$4,000, the Justice Court  
16 retained proper jurisdiction over the instant case.

17 10. Based on the foregoing, the Court finds that the Justice Court did not fail to  
18 perform an act which the law requires as a duty resulting from its office. Moreover, the Justice  
19 Court's discretion was not manifestly abused or exercised arbitrarily or capriciously.

20 ///

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**ORDER**

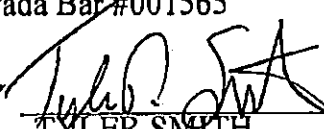
THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Mandamus shall be, and it is, hereby denied.

DATED this \_\_\_\_ day of February, 2022. Dated this 3rd day of February, 2022

  
DISTRICT JUDGE

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

05B 6AB A70B 0076  
James Bixler  
District Court Judge

BY   
TYLER SMITH  
Chief Deputy District Attorney  
Nevada Bar #011870

**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that service of Findings of Fact, Conclusions of Law and Order Denying Petition for Writ of Mandamus, was made this 2nd day of February, 2022, by Electronic Filing to:

ANNE TRAUM, ESQ.  
anne.traum@unlv.edu; and  
MICHAEL PARIENTE, ESQ.  
michael@parientelaw.com

Secretary for the District Attorney's Office

cj/L1

1 CSERV

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5  
6 Nevada State of, Plaintiff(s)

CASE NO: A-21-837620-W

7 vs.

DEPT. NO. Department 3

8 David Maffit, Defendant(s)  
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the  
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
case as listed below:

14 Service Date: 2/3/2022

15 Anne Traum

anne.traum@unlv.edu

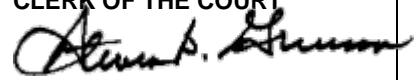
16 Magaret (Eve) Hanan

eve.hanan@unlv.edu

17 Karen Brokaw

karen.brokaw@unlv.edu  
18  
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RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

STATE OF NEVADA,	)	
	)	CASE NO. A-21-837620-W
Plaintiff,	)	
	)	
vs.	)	DEPT. NO. III
	)	
DAVID MAFFIT,	)	
	)	<b>Transcript of Proceedings</b>
Defendant.	)	
	)	

BEFORE THE HONORABLE MONICA TRUJILLO, DISTRICT COURT JUDGE

**WRIT OF MANDAMUS/PROHIBITION**

WEDNESDAY, NOVEMBER 3, 2021

APPEARANCES:

For the State:	TYLER SMITH, ESQ.
For the Defendant:	MIA BACHER
	(Student Practicing Certificate)

RECORDED BY:	REBECA GOMEZ, DISTRICT COURT
TRANSCRIBED BY:	KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording; transcript  
produced by transcription service.

1 WEDNESDAY, NOVEMBER 3, 2021, AT 8:34 A.M.

2

3 THE COURT: Case number A-21-837620-W, *State of*  
4 *Nevada versus David Maffit*. Who is here on behalf of the  
5 petitioner?

6 MS. BACHER: Mia Bacher, practicing with a student  
7 practice certificate under Supreme Court Rule 49.3, under  
8 the supervision of Professor Traum and Professor Hanan, for  
9 Mr. Maffit.

10 THE COURT: Thank you. On behalf of respondent?

11 MR. SMITH: Tyler Smith on behalf of the State of  
12 Nevada, Your Honor.

13 THE COURT: Thank you. So, we are on for the Writ  
14 of Mandamus and/or Prohibition. I've reviewed that  
15 Petition, as well as the Answer, and the Reply. And, on  
16 behalf of petitioner, go ahead with your argument.

17 MS. BACHER: Yes, Your Honor.

18 So, our Petition boils down to two main issues.  
19 First is the jurisdictional issue. Contracting without a  
20 license is not a misdemeanor because it has severe and  
21 uncapped fines. And, thus, the Justice Court does not have  
22 jurisdiction.

23 The second issue is the jury issue. So, if  
24 contracting without a license is a misdemeanor, it's a  
25 serious offense, as demonstrated by the Nevada Legislature,

1 to warrant a jury. In 2015, the Nevada Legislature blew  
2 up, for lack of a better term, the statute of contracting  
3 without a license and increased the penalties to deter  
4 unlicensed contractors and to ensure that courts were  
5 imposing serious enough fines. So, we're asking today that  
6 you either dismiss the Complaint for lack of jurisdiction  
7 or to grant Mr. Maffit a jury trial if the Justice Court  
8 has jurisdiction.

9 I'd like to talk briefly about the jurisdiction  
10 issue first. Our position is that contracting without a  
11 license is not a misdemeanor. The Justice Court's  
12 jurisdiction is limited to misdemeanors and both the  
13 classification and punishment statutes for misdemeanors cap  
14 the fines at \$1,000. Here, we have a fine of up to \$4,000,  
15 plus a fine enhancement of 10 percent of the contract.  
16 These fines go way beyond the statutory definition of a  
17 misdemeanor. And we know that this \$1,000 maximum has no  
18 exceptions. The unless clause cited by the State is not an  
19 exception in this case. The Nevada Supreme Court has held  
20 that an identical and less clause is a savings clause, not  
21 an exception. So, it doesn't apply here. And the Justice  
22 Court was wrong to interpret this as an exception and not a  
23 savings clause. So, because contracting without a license  
24 is not a misdemeanor, because it exceeds the statutory  
25 amount, the Complaint should be dismissed for lack of

1 jurisdiction.

2           Now, moving on to the second issue. If  
3 contracting without a license is a misdemeanor, it's a  
4 serious misdemeanor that warrants a jury trial. Juries are  
5 granted for all crimes that are deemed serious and  
6 misdemeanors can be serious, so long as the punishments are  
7 severe enough, like the ones here. Here, we know the  
8 offense is serious because the fines are severe, because  
9 the Legislature intended it to be serious, and because  
10 these fines implicate the fundamental right against  
11 excessive fine.

12           We know the fines are severe because the fines for  
13 this crime labeled a misdemeanor exceed the felony level  
14 amount -- or the felony fine amount. It's four times the  
15 amount listed in the misdemeanor statute and allows for a  
16 10 percent fine enhancement. We also know from the  
17 legislative history that the legislature intended this to  
18 be a serious crime when they quadrupled the fine and added  
19 the enhancement.

20           And, finally, the fines can also implicate the  
21 fundamental right against excessive fines. The U.S.  
22 Supreme Court held in *Timbs* that excessive fines are a  
23 fundamental right and the Nevada Supreme Court has  
24 invalidated uncapped fines in misdemeanor cases before.  
25 Because it implicates this fundamental right, and because

1 the Legislature intended it to be serious, contracting  
2 without a license, if it's a misdemeanor, is a serious one  
3 that warrants a jury trial.

4           So, once again, we'll be asking you to either  
5 dismiss the Complaint for lack of jurisdiction or, if you  
6 find this crime to be a misdemeanor, to grant Mr. Maffit a  
7 jury trial. Thank you.

8           THE COURT: Thank you. Mr. Smith.

9           MR. SMITH: Well, Your Honor, here's the thing.  
10 The only -- according to petitioner here, the only thing  
11 that defines a crime, apparently, as to what it is, whether  
12 it's a misdemeanor, gross misdemeanor, or a felony, is the  
13 fine amount. So, we have to ignore the rest of the statute  
14 where the Legislature itself said this is a misdemeanor.  
15 And the Legislature gets to define what a crime is. And  
16 they've done that here.

17           And the amount of legal and, quite frankly,  
18 intellectual gymnastics that had to be done in order to  
19 elevate this crime from a misdemeanor all the way up to  
20 which I'm guessing it's now a felony, has taken multiple  
21 briefs, a Petition, and here we are today in order just to  
22 get the Courts, both the Justice Court and now Your Honor,  
23 to ignore the fact that laid out in the statute, the  
24 Legislature has said: This is a misdemeanor.

25           And, quite frankly, I find it kind of odd to be on

1 this side, as the State -- representing the State of  
2 Nevada, asking this Court not to elevate a crime, but to  
3 keep it what the Legislature says it is to begin with. I  
4 mean, and common sense says: Do we really want to expose  
5 their client, or anybody else, who happens to go into a  
6 home and perform some work without a contractor's board  
7 license, now we want to make those people felons? That  
8 doesn't make any sense. And neither did the Legislature.  
9 I mean, does the petitioner understand what he could  
10 potentially be exposed to? Because this isn't his first  
11 rodeo with this particular offense either.

12           And, so, in the future, now we're saying, even  
13 though the Legislature says this is a misdemeanor, the  
14 State can now charge you as a felon. And that just doesn't  
15 make any sense, quite frankly. And, in order to get there,  
16 we have to ignore the plain meaning of the statute where  
17 they said this is a misdemeanor. And it has to be a  
18 felony, because if we take their arguments to their logical  
19 conclusion, the maximum -- typical maximum allowable fine  
20 for a gross misdemeanor is \$2,000. So, this has to be a  
21 felony, if we agree with their arguments.

22           And that doesn't divest the Justice Court of  
23 jurisdiction. All it would mean now is there's somehow a  
24 change in the law, that the State is wrong charging a  
25 misdemeanor when it says in the statute this is a

1 misdemeanor.

2           So, really, the remedy is we go back down to  
3 Justice Court, we file an Amended Complaint calling it a  
4 felony, and we can do a preliminary hearing. Because the  
5 Justice Court does have jurisdiction, preliminary hearings  
6 for gross misdemeanors and felonies. But I don't think  
7 their client wants that. I don't think that's really a  
8 good idea for the defense here because I don't think people  
9 who do this should be felons. And neither does the  
10 Legislature.

11           So, quite frankly, this is a misdemeanor, as  
12 defined by the Legislature. And the Legislature can set  
13 fines at any amount that it wants to. There is nothing  
14 that says, either in the Constitution, or here, or in the  
15 law, that the Legislature can't increase the amount of a  
16 fine for a misdemeanor. And there's nothing that says  
17 that, and they can, and they did.

18           And, quite -- and, also, Judge, I mean, if we're  
19 going to subject people who do this to felony prosecution,  
20 we don't have to dismiss the Complaint.

21           But -- and, then, with regards to whether or not  
22 it's a misdemeanor requiring a jury trial, the only  
23 misdemeanor that's been held to require a jury trial in  
24 this jurisdiction so far is domestic violence. That did  
25 not happen until our Legislature codified the prohibited

1 person statute to include people convicted of domestic  
2 violence, to mirror the federal statute. Before that  
3 happened, even though under federal law it was illegal for  
4 someone convicted of domestic violence to have a gun, our  
5 Supreme Court says: No, because our Legislature has not  
6 said that is, we are still not holding that you get a jury  
7 trial for that particular misdemeanor.

8           So, even then, before that, you couldn't have a  
9 gun and we still said -- even though that particular  
10 misdemeanor is also enhanceable. That particular  
11 misdemeanor can become a felony and that's pretty serious,  
12 too. Those are pretty serious consequences. But that  
13 still wasn't enough for our Supreme Court to say you get a  
14 jury trial if you're convicted of domestic violence.

15           And, so, now, we're saying we take a simple thing  
16 by increasing a fine, now, all of a sudden, by that one  
17 action, makes us ignore the word misdemeanor laid out in  
18 the statute. It makes it a felony, all of a sudden. And,  
19 not only that, that one action, increase of a fine, now  
20 entitles you to a jury for a misdemeanor offense. And that  
21 just doesn't make any sense. So, I ask you to deny the  
22 Petition.

23           THE COURT: All right. Thank you. Anything in  
24 response?

25           MS. BACHER: Just briefly, Your Honor.



1 I'd like to bring it back to our two main points,  
2 so the first one of which is jurisdiction. We believe the  
3 Justice Court lacks jurisdiction because the statutes are  
4 very clear. Misdemeanors are capped at \$1,000. Now, the  
5 State is right that the Legislature can set whatever  
6 penalties they want, but, here, what they've done is set a  
7 maximum with no exceptions. If they had wanted there to be  
8 an exception, they could have written one into the statute,  
9 but there just isn't one. And, for that reason, we don't  
10 believe the Justice Court has jurisdiction.

11 Now, to the jury issue, briefly. We believe that  
12 if contracting without a license is a misdemeanor, that  
13 it's a serious one, as determined by the Legislature. We  
14 understand the *Anderson* case and that, in that case, it was  
15 a domestic violence case. But, in that case, the statutory  
16 fine for domestic violence was capped at \$1,000. Here, our  
17 case, the statutory fine is capped at \$4,000, which is four  
18 times the maximum and also allows for that fine  
19 enhancement.

20 And we determine the seriousness of a crime,  
21 whether it be a felony or a misdemeanor, based on the  
22 legislative intent. Here, we have the statute saying that,  
23 you know, they've blown up the maximums for this crime, and  
24 we know from the legislative history that they intended it  
25 to be serious because they didn't think people were

1 deterred from committing this crime and they didn't think  
2 that judges were handing out severe enough punishments.  
3 So, they wanted the Courts to take this crime more  
4 seriously, and that's why they added the fine enhancement,  
5 increased the penalties, because they wanted this to be a  
6 serious crime.

7           So, if this crime is a misdemeanor, we believe it  
8 is serious enough to grant a jury trial. But we do ask  
9 that the Complaint be dismissed outright for lack of  
10 jurisdiction.

11           THE COURT: All right. Thank you.

12           The Court's going to issue a decision via minute  
13 order and I'm going to set this on chamber's calendar for  
14 the 18<sup>th</sup>. Thank you.

15           MS. BACHER: Thank you, Your Honor.

16           MR. SMITH: Thank you, Your Honor.

17  
18                           PROCEEDING CONCLUDED 8:45 A.M.

19                           \*   \*   \*   \*   \*

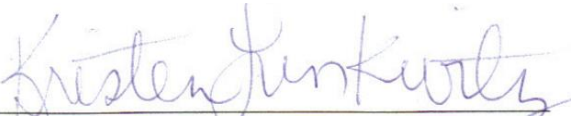
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**CERTIFICATION**

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

**AFFIRMATION**

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



KRISTEN LUNKWITZ  
INDEPENDENT TRANSCRIBER