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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.

Electronically Filed
Feb 04 2022 05:02 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

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

PET

THE PARIENTE LAW FIRM, P.C.
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**IN THE SUPREME COURT OF THE STATE OF
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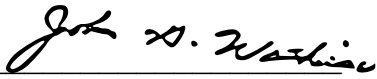
**AMENDED PETITION FOR WRIT OF MANDAMUS AND/OR
PROHIBITION**

1 NOW COMES PETITIONER, DAVID C. MAFFIT (hereinafter referred to
2 as "Maffit"), by and through his attorneys of record, MICHAEL D. PARIENTE
3 and JOHN G. WATKINS, OF COUNSEL, of the Pariente Law Firm, P.C. in
4 association with Thomas & Mack Legal Clinic, and moves this Honorable Court
5 for an order granting this Petition for Writ of Mandamus and/or Prohibition
6 reversing District Court Judge Monica Trujillo's denial of Maffit's Petition for
7 Writ of Mandamus and/or Prohibition challenging Justice of the Peace Diana
8 Sullivan's Orders denying (1) Defendant's Motion to Dismiss the Criminal
9 Complaint Due to Lack of Jurisdiction and Violation of Due Process, dated
10 February 11, 2021, and (2) Defendant's Jury Demand, dated October 6, 2020.
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14 DATED this 4th day of February, 2022.
15

16 Respectfully submitted,

17 BY: 
18 MICHAEL D. PARIENTE
19 Nevada Bar No. 9469

20 BY: 
21 JOHN G. WATKINS, ESQ., OF COUNSEL
22 Nevada Bar No. 1574
23 3800 Howard Hughes Parkway, Suite 620
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26 In association with
27 THOMAS & MACK LEGAL CLINIC
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Matters arising under NRAP 17(a)(14) shall be retained by the Supreme Court. NRAP 17(a)(14) states in relevant part, “[m]atters raising as a principal issue a question of statewide public importance” The issue in David Maffit’s case involves the constitutionality and interpretation of NRS 624.700 and NRS 624.750(2)(a), one of first impression in this Court and of fundamental statewide importance.

JURISDICTION

The Supreme Court has the “power to issue writs of mandamus.” Nev. Const., art 6 § 4; NRS 34.160. (A writ of mandamus will issue “. . . to compel the admission of a party to the use and enjoyment of a right . . . to which [she] is entitled and from which [she] is unlawfully precluded by such inferior tribunal” Nev. Const., art 6 § 4; NRS 34.320. (The writ of prohibition “.... arrests the proceedings of any tribunal, corporation, board or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.”))

RELIEF SOUGHT

Mr. Maffit seeks a writ of mandamus and/or prohibition as follows:

(1) reversing the district court's denial of Mr. Maffit's petition for a writ of mandamus and/or prohibition filed in the district court, and (2) ordering the

1 justice court to dismiss the NRS 624.70 charge filed against Mr. Maffit or in
2 the alternative, providing a jury trial and all other felony safeguards
3 attendant to felony prosecutions.
4

5 6 **ISSUES PRESENTED**

- 7
- 8 1. NRS 624.700(1)(a) IS NOT A MISDEMEANOR AS A MATTER
9 OF LAW, LEAVING THE JUSTICE COURT WITHOUT
10 SUBJECT MATTER JURISDICTION.
 - 11 2. NRS 624.700 IN LIGHT OF NRS 624.750(2) IS
12 UNCONSTITUTIONALLY VOID FOR VAGUENESS.
 - 13 3. THE MAGNITUDE OF THE PECUNIARY PENALTIES
14 RENDERS NRS 624.700(1)(a) A SERIOUS OFFENSE
15 MANDATING THE LEGAL SAFEGUARDS ATTENDED TO
16 FELONY OFFENSES.

17 **RELEVANT FACTS**

18 Mr. Maffit is charged with violating NRS 624.700(1)(a), contracting
19 without a license, and despite the offense being labeled a misdemeanor it is
20 not a misdemeanor as a matter of law. Mr. Maffit is subject to fines in excess
21 of \$1,000 (up to a maximum of \$4,000), making the offense a gross
22 misdemeanor or felony. Labeling the offense a misdemeanor yet authorizing
23 felony-like fines renders NRS 624.700(1)(a) unconstitutionally void for
24 vagueness. Is it a misdemeanor, gross misdemeanor, felony or something
25 else which we don't know?
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1 2. Assuming jurisdiction in the Justice Court, the charged offense violates
2 due process because NRS 624.750(2)(a) is unconstitutionally vague and
3 appears to authorize felony-level fines without felony-level procedural
4 protections.
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6 3. Assuming the case proceeds in the Justice Court, Mr. Maffit has a right to
7 jury trial because the charged offense is “serious” for purposes of the
8 Sixth Amendment.
9

10 **B. Statutory Background**

11 Whether the charged offense is a misdemeanor is central to the jurisdictional,
12 statutory, and constitutional questions at issue. Before 2015, first offense
13 contracting without a license was a misdemeanor like any other: it was punishable
14 by a maximum six-month jail term and/or a maximum \$1,000 fine. *See* NRS
15 193.120(1) (classifying misdemeanors); A.B. 137, 2015 Leg., 78th Sess. at 5 (Nev.
16 2015) (showing statutory text before and after amendment). In 2015, the Nevada
17 Legislature dramatically “increased the fine structure” for this offense in order to
18 deter violations and “put some teeth” into the fines. *See Minutes of the Nev. St.*
19 *Legislature: Hearing on Assembly Bill No. 137 Before the Assembly Comm. on*
20 *Com. and Lab.*, 2015 Leg., 78th Sess. 4 (April March 2, 2015). The legislature in
21 2015 added two fines provisions: it increased the fine for a first offense to “not less
22 than \$1,000 nor more than \$4,000,” NRS 624.750(2)(a), and added a new “fine
23 enhancement,” NRS 624.750(3). It retained other financial penalties described
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1 below. The \$4,000 maximum fine plainly exceeds the maximum \$1,000 fine for a
2 misdemeanor offense under the classification and misdemeanor punishment
3 statutes.

4
5 The classification statute provides that a misdemeanor fine cannot exceed
6 \$1,000:

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

15 NRS 193.120 (italics added).

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

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

23 NRS 193.150(1).

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

- a mandatory criminal fine of not less than \$1,000 nor more than \$4,000, NRS 624.750(2)(a);
- an additional criminal “fine enhancement” of “not more than 10 percent of the value of 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 “Frankenstein” 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

1 for granting a writ of prohibition arresting proceedings). A writ is specifically
2 authorized in a case, such as this, where the Justice Court has “has exceeded [its]
3 jurisdiction,” see NRS 34.020(2), and the defendant challenges the
4 constitutionality of a statute in the Justice Court, see NRS 34.020(3) (providing for
5 appellate review from a case arising in the Justice Court after the district court has
6 passed upon the constitutionality or validity of a statute).
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9 A writ of mandamus or prohibition is appropriate because this Petition
10 presents constitutional, statutory, and jurisdictional issues of “first impression and
11 fundamental public importance” that “need[] clarification,” see *Williams v. Eighth*
12 *Judicial Dist. Court*, 127 Nev. 518, 525, 262 P.3d 360, 365 (2011) (citing, inter
13 alia, *County of Clark v. Upchurch*, 114 Nev. 749, 753, 961 P.2d 754, 757 (1998)).
14 Review of a pre-trial writ promotes judicial economy and mitigates or resolves
15 future litigation. *Id.*, 127 Nev. at 525, 262 P.3d at 365 (citing *Smith v. District*
16 *Court*, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997)).
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20 The central issue here, whether the charged offense is a misdemeanor, is
21 profoundly consequential: it determines which court has jurisdiction (justice or
22 district court), which procedural safeguards apply (including whether the defendant
23 has a right to a preliminary hearing, counsel, jury trial, a twelve-person jury, and
24 appeal to the Nevada Supreme Court), and the maximum fine amount, if any, that
25 may be imposed upon conviction. Most convictions in Nevada are for
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1 misdemeanor offenses,² so what qualifies as a misdemeanor and the maximum fine
2 that can imposed for a misdemeanor are issues of statewide importance and worthy
3 of clarification.
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5 Either a writ or prohibition or mandamus could provide relief here. A writ of
6 prohibition would preclude the Justice Court from trying a case outside its
7 jurisdiction. *See* NRS 34.320(a writ of prohibition “arrests proceedings ... [that]
8 are without or in excess of the [tribunal’s] jurisdiction”); *State v. Justice Ct. of Las*
9 *Vegas Tp., Clark County (Richmond)*, 112 Nev. 803, 806, 919 P.2d 401, 403
10 (1996) (granting writ of prohibition because justice court exceeded its jurisdiction);
11 *see also Gladys Baker Olsen Family Trust By and Through Olsen v Eighth Judicial*
12 *Dist. Court*, 110 Nev. 548, 552, 874 P.2d 778, 780-81(1994) (“*Gladys Baker Olsen*
13 *Family Trust*”) (the purpose of a writ of prohibition is “to prevent courts from
14 transcending the limits of their jurisdiction”). A writ of mandamus would compel
15 the Justice Court to dismiss the Criminal Complaint on jurisdictional or
16 constitutional grounds or, at a minimum, guarantee Mr. Maffit his right to a jury
17 trial. *See, e.g., Andersen v. Eighth Judicial Dist. Ct. in and for Clark County*, 135
18 Nev. 321 324-25, 448 P.23d 1120, 1124 (2019) (granting writ of mandamus
19 requiring right to jury trial for misdemeanor domestic battery).
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28 ² *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
2 34.170, NRS 34.330. Given his well-founded jurisdictional and constitutional
3 challenges, forcing Mr. Maffit to proceed to trial in the justice court would involve
4 substantial time, risk, legal uncertainty, procedural unfairness, and stigma. If
5 convicted, he would be required to appeal to the district court before petitioning by
6 writ to the Nevada Supreme Court, a process that would take months or years to
7 complete. *See, e.g., Nev. Const. Art. 6, § 6 and NRS 177.015(1)(a) (vesting district*
8 *court with final appellate jurisdiction over cases arising in the justice courts); NRS*
9 *34.020(2)-(3) (authorizing appellate court review by writ of jurisdictional and*
10 *constitutional challenges in cases arising from justice court).*

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

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

26 The Justice Court lacks jurisdiction because the charged offense is not a
27 misdemeanor under Nevada law. The reason is simple: misdemeanor fines are
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1 capped at \$1,000, no exceptions, and the \$4,000 maximum fine under NRS
2 624.750(2)(a),³ far exceeds that statutory maximum for a misdemeanor offense. In
3 Nevada a misdemeanor is defined by the classification statute, which provides that
4 “Every crime punishable by a fine of not more than \$1,000, or by imprisonment in
5 a county jail for not more than 6 months, is a misdemeanor.” NRS 193.120(3).
6
7 What qualifies as a misdemeanor is definitional (based on the classification
8 statute), jurisdictional (determining whether the case will be heard in justice or
9 district court), procedural (determining the process and defendant’s rights), and
10 substantive (establishing the maximum punishment).
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13 In holding that it has jurisdiction over the charged offense, the Justice Court
14 broadly interpreted the misdemeanor punishment statute while ignoring the
15 classification statute defining a misdemeanor. More specifically, it concluded that
16 the savings clause in the misdemeanor punishment statute does not “only operate
17 as a savings clause,” but also permits “the two statutes,” referring to NRS
18 624.750(2)(a) and the misdemeanor punishment statute, “to be read in harmony
19 with one another while still maintaining the classification of a first offense as a
20 misdemeanor.” MTD Order dated February 11, 2021, at PA 25. The Justice Court
21 erred in expansively construing its own jurisdiction and interpreting the
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27 ³ For sake of simplicity, this argument focuses on the maximum \$4,000 fine under
28 NRS 624.750(2)(a), though the additional, potentially severe financial penalties
described above, underscore that the charged offense is not a misdemeanor.

1 misdemeanor punishment statute in a way that conflicts with the classification
2 statute and lacks textual and case law support.

3
4 1. Justice court jurisdiction is limited to misdemeanor offenses.

5 The jurisdictional question turns on the definition of a misdemeanor in
6 Nevada. Justice courts are “courts of limited jurisdiction” with jurisdiction over
7 “all misdemeanors and no other criminal offenses.” *See Parsons v. State*, 116 Nev.
8 928, 933, 10 P.3d 836, 839 (2000) (clarifying the justice courts’ limited function in
9 gross misdemeanor and felony cases); *see also* NRS 4.370(3) (“Justice courts have
10 jurisdiction of all misdemeanors and no other criminal offenses except as otherwise
11 provided by specific statute.”); *see State v. Frederick*, 129 Nev. 251, 253, 299 P.3d
12 372, 374 (2013) (explaining Legislature’s authority define the jurisdiction of the
13 justice courts, which is limited to misdemeanors). A statute authorizing justice
14 court jurisdiction must be strictly construed. *See Camino v. Lewis*, 52 Nev. 202,
15 284 P. 766, 767 (1930) (“Justice courts have peculiar and limited jurisdiction. The
16 powers conferred upon them by a statute must be strictly pursued.”). The Justice
17 Court’s expansive interpretation of its jurisdiction runs counter to the basic
18 principle that it is a limited-jurisdiction court whose jurisdiction is to be strictly
19 construed.
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26 2. The classification statute defines a misdemeanor offense.

27 The Justice Court’s first misstep was that it focused on the misdemeanor
28 punishment statute while ignoring the classification statute defining a

1 misdemeanor. MTD Order, February 11, 2021, at 1-3. The classification statute
2 categorizes all criminal offenses into three baskets: felonies, gross misdemeanors,
3 and misdemeanors. *See Frederick*, 129 Nev. at 253, 299 P.3d at 374 (explaining
4 that NRS 193.120 “set[s] forth three classifications of crimes—felony, gross
5 misdemeanor, and misdemeanor). In plain, express terms, the classification statute
6 provides that a misdemeanor fine cannot exceed \$1,000, no exceptions. NRS
7 193.120(3); *see Guzman v. Second Judicial Dist. Court*, 136 Nev. 103, 106, 460
8 P.3d 443, 447 (2020) (stating that the starting point for statutory interpretation is
9 the statute’s plain language). *See*, NRS 193.120(3) (“Every crime punishable by a
10 fine of not more than \$1,000, or by imprisonment in a county jail for not more than
11 6 months, is a misdemeanor”). The Justice Court failed to honor the express terms
12 of the classification statute.
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17 3. The classification and misdemeanor punishment statutes are
18 consistent.⁴
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20 The Justice Court’s expansive interpretation of the “unless” clause in the
21 misdemeanor punishment statute, NRS 193.150(1), conflicts with the classification
22 statute, NRS 193.120(3). Like the classification statute, the misdemeanor
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26 ⁴ See also, NRS 624.750(3) (“For the second offense, is guilty of a gross
27 misdemeanor and **shall** be punished by a fine of not less than \$4,000 nor more than
28 \$10,000. . . .” (emphasis added.) See also, NRS 193.140. “Every person convicted
of a gross misdemeanor shall be punished . . . by a fine of not more than \$2,000 . . .
.” This conflict is obvious.

1 punishment statute limits a misdemeanor fine to \$1,000 with one caveat: “unless
2 the statute in force at the time of commission of such misdemeanor prescribed a
3 different penalty.” NRS 193.150(1). The Nevada Supreme Court has recognized
4 that this “unless” clause is a “savings” clause that merely codifies the rule that “the
5 proper penalty is the penalty in effect at the time of the commission of the offense
6 and not the penalty in effect at the time of sentencing.” *See State v. Second Judicial*
7 *Dist. Court (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008) (referring to
8 the “savings statutes” incorporated into the misdemeanor punishment statute, NRS
9 193.150).

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13 As a preliminary step in any statutory interpretation, the classification and
14 misdemeanor punishment statutes must be read together, based on their plain
15 language, and in harmony with each other. *See, e.g., Williams v. State Dept. of*
16 *Corrections*, 133 Nev. 594, 596, 402 P.3d 1260, 1262 (2017) (in interpreting
17 statutes, courts must start with the “plain language” of the statute, interpret a
18 statute “in harmony” with other statutes “whenever possible,” and avoid
19 interpretations that “render[] language meaningless or superfluous”); *Williams v.*
20 *Clark Cnty. Dist. Attorney*, 118 Nev. 473, 484-85, 50 P.3d 536, 543-44 (2002)
21 (requiring courts to construe statutes in harmony so long as the construction does
22 not violate legislative intent or create an absurd result). Harmonizing these statutes
23 is a simple task: the classification and punishment statutes both cap misdemeanor
24 fines at \$1,000. The “unless” clause in the misdemeanor punishment statute must

1 do the same, meaning a court must apply the “law in effect at the time of
2 commission of the crime,” *Pullin*, 124 Nev. at 567, 188 P. 3d at 1081, but cannot
3 exceed a six-month jail term and/or a \$1,000 fine. Interpreting the “unless” clause
4 to permit a “misdemeanor” fine that exceeds \$1,000, as the Justice Court did here,
5 does violence to the text and important purpose of the classification statute and the
6 plain language of “the unless” clause.
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9 4. The Justice Court’s interpretation of the “unless” clause lacks support.

10 The Justice Court got wrong what the misdemeanor punishment statute does
11 and does not say. The “unless” clause cannot sensibly be read to operate as a
12 “specific statute” exception, which is how the Justice Court construed it. Rather,
13 the “unless” clause has long been interpreted to be a savings clause applied at
14 sentencing. *See Pullin*, 124 Nev. at 567, 188 P.3d at 1081 (citing *Tellis v. State*, 84
15 Nev. 587, 445 P.2d 938 (1968) and detailing the “general savings statutes adopted
16 in 1967” in the felony, gross misdemeanor, and misdemeanor punishment statutes).
17 A sentencing statute must be read in light of “other sentencing statutes,” paying
18 close attention to textual distinctions. *See Williams v. State Dept. of Corrections*,
19 133 Nev. at 597-98, 402 P.3d at 1263-64. As the Nevada Supreme Court stated in
20 *Williams*, which addressed minor wording differences impacting parole eligibility,
21 “[W]hen [the Legislature] includes particular language in one section of a statute
22 but omits it in another ... this Court presumes that [the Legislature] intended a
23 difference in meaning.” *Id.* (citing, inter alia, *Loughrin v. United States*, 573 U.S.

351, 357, 134 S. Ct. 2384, 2390 (2014)). A **savings clause** and a **“specific statute” exception** are distinct statutory features, recognizable by their texts.

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

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

See, NRS 193.140(1) (gross misdemeanor), and NRS 193.150(1) (misdemeanor).

By its text, this provision addresses and is triggered by an intervening change in the law, *i.e.*, when “the statute in force at the time of commission prescribed a different penalty” than the law in effect at sentencing. The savings clause would become relevant only if Mr. Maffit is convicted *and* the penalty changes before his sentencing.

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

1 Except when a person is convicted of a category A felony, and [specific
2 statute exception:] *except as otherwise provided by specific statute*, a person
3 convicted of a felony shall be sentenced to a minimum term and a maximum
4 term of imprisonment which must be within the limits prescribed by the
applicable statute, [savings clause:] *unless the statute in force at the time of*
commission of the felony prescribed a different penalty.

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

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

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17 5. The charged offense is not a misdemeanor.

18 The Justice Court lacks jurisdiction over the charged offense because NRS
19 624.750(2)(a), which carries felony-level fines, is not a misdemeanor. The
20 statutory conflict here cannot be resolved in favor of expanding the jurisdiction in
21 the Justice Court, whose jurisdiction is limited and must be strictly construed.
22 *Camino v. Lewis*, 52 Nev. at 284, P. at 767. When it comes to jurisdiction, courts
23 look to the severity of the penalties, not the misdemeanor label. *See Ex Parte*
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27 ⁵ The statute at issue in this case, NRS 624.750(2)(a), also contains a specific
28 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 *McGee*, 44 Nev. 23, 189 P. 622 (1920) (district court had jurisdiction over
2 “misdemeanor” offense authorizing felony penalties). When it amended NRS
3 624.750, the Nevada Legislature could have taken action to allow the Justice Court
4 to hear violations, for example, (1) by increasing the maximum fine for a
5 misdemeanor in the classification statute, *see* NRS 193.120(3) (noting citing A.B.
6 418 (1981), which increased the maximum fine from \$500 to \$1,000); (2) by
7 adding a specific statute exception to the classification statute allowing
8 misdemeanors with fines over \$1,000; or (3) by specifically authorizing
9 jurisdiction over the charged offense in the Justice Court, *see* NRS 4.370(3)
10 (“Justice courts have jurisdiction of all misdemeanors and no other criminal
11 offenses *except as otherwise provided by specific statute.*”) (emphasis added). The
12 legislature took none of these steps. While it retained the misdemeanor label in
13 NRS 624.750(2)(a), there is simply no evidence that the legislature intended to
14 expand the jurisdiction of the Justice Court or muddy the definition of a
15 misdemeanor offense. The Justice Court lacks jurisdiction over the charged offense
16 and should be prohibited from hearing the case.

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

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

10 NRS 624.750(2)(a) is unconstitutionally vague because it fails to provide
11 notice of the court and procedure for determining guilt. “The Government violates
12 the Due Process Clause when it takes away someone’s life, liberty, or property under
13 a criminal law so vague that it . . . invites arbitrary enforcement.” *Johnson v. United*
14 *States*, 576 U.S. 591, 597 (2015) (invalidating a clause of the Armed Career Criminal
15 Act). “These principles apply not only to statutes defining elements of crimes, but
16 also to statutes fixing sentences.” *Id.* (citing *United States v. Batchelder*, 442 U.S.
17 114, 123 (1979)). The fine range for a first offense, \$1,000 to \$4,000, spans all three
18 crime classifications (misdemeanor, gross misdemeanor, and felony) and yet it is
19 unclear if the charged offense should be adjudicated in justice court as a
20 misdemeanor or in district court like other felonies.
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25 Because NRS 624.750(2)(a) fails to specify the penalty, court, or process, it
26 risks arbitrary enforcement by prosecutors and courts. A statute is unconstitutionally
27 vague if it authorizes arbitrary and discriminatory enforcement. *See Chicago v.*
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1 *Morales*, 527 U.S. 41, 56 (1999); *see also Lapinski v. State*, 84 Nev. 611, 613, 446
2 P.2d 645, 646 (1968) (legislature unconstitutionally delegated to prosecutor the
3 authority to decide the class of the offense). In *Lapinski*, the defendant was charged
4 with felonious taking of a vehicle under a statute, NRS 205.272 (1967), that allowed
5 the prosecutor to decide whether to charge the offense as a misdemeanor, gross
6 misdemeanor, or felony. *Id.* at 612, 446 P.2d at 646. The Nevada Supreme Court
7 held that a statute granting a prosecutor such discretion was an unconstitutional
8 delegation of legislative power. *Id.* at 613, 446 P.2d at 646 (“[T]he power to define
9 crimes and penalties lies exclusively with the legislature.”); *see also United States*
10 *v. Evans*, 333 U.S. 483, 486 (1948) (“[D]efining crimes and fixing penalties are
11 legislative, not judicial, functions.”). Because Mr. Maffit faces penalties for the
12 charged offense that range from misdemeanor to felony, allowing a prosecutor or
13 court to decide which it is, without guidance from the legislature, creates risk of
14 arbitrary enforcement.

15
16 This vagueness problem cannot be reconciled through judicial interpretation.
17 *Johnson*, 576 U.S. at 602 (citing *United States v. Evans*, 333 U.S. 483, 495 (1948)
18 (invalidating statute that criminalized conduct without providing a penalty)). As
19 the Court explained in *Evans*, only the legislature, not the courts, can dictate the
20 penalty for a criminal offense. *Evans*, 333 U.S. at 486; *see also Lapinski*, 84 Nev.
21 at 613, 446 P.2d at 646 (“The power to define crimes and penalties lies exclusively
22 in the legislature.”). Selecting one statutory provision over another would amount

1 to a “guess at the revision [the legislature] would make.” *See United States v.*
2 *Evans*, 333 U.S. 483, 486 (1948)). As in *Evans*, this Court is presented not with a
3 statutory construction problem, but with a “multiple choice problem.” *Evans*, 333
4 U.S. at 484. For the Justice Court to have jurisdiction, a court would have to either
5 reject the \$1,000 maximum fine for misdemeanors in the classification statute or
6 reject the \$1,000-\$4,000 penalty provision in NRS 624.750(2)(a). Either of these
7 options involves a court re-writing (not simply interpreting) a criminal statute and
8 violates due process because it intrudes upon the exclusive province of the
9 legislature to define offenses and fix penalties. *See Evans*, 333 U.S. at 485-86;
10 *Lapinski*, 84 Nev. at 613, 446 P.2d at 646. Because NRS 624.750(2)(a) expressly
11 provides that first offense contracting without a license is a misdemeanor,
12 upgrading the charge to a felony offense violates due process. *See Chambers v.*
13 *Mississippi*, 410 U.S. 284, 294 (1973) (explaining that due process includes a
14 defendant’s right to reasonable notice of a charge against him).

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

1 Constitution, which vests the legislature, not prosecutors, with the power to decide
2 which courts have jurisdiction over misdemeanor and felony charges. *See Kopp*,
3 118 Nev. at 204, 43 P.3d at 343.
4

5 Because there is no judicial solution here other than dismissal, Mr. Maffit
6 urges this Court to grant a writ a prohibition or mandamus to that effect.
7

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

10 As a matter of due process, Mr. Maffit is entitled to the same procedural
11 safeguards afforded felony defendants under state and federal law. *See Wilkinson v.*
12 *Austin*, 545 U.S. 209, 221 (2005) (recognizing that protected liberty interests may
13 arise “from the Constitution itself, by reason of guarantees implicit in the word
14 ‘liberty,’ . . . or it may arise from an expectation or interest created by state laws or
15 policies” (internal citation omitted)); U.S. Const. amends. V, XIV; Nev. Const. art.
16 I, § 8.
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19 Criminal fines can amount to serious punishment and thus trigger
20 constitutional scrutiny and protections. Excessive fines are expressly prohibited by
21 the Eighth Amendment, which the Supreme Court recently applied to states via the
22 Fourteenth Amendment. *See Timbs v. Indiana*, 139 S. Ct. 682, 689-90 (2019)
23 (recognizing that the Excessive Fines Clause is “fundamental to our scheme of
24 ordered liberty” and “deeply rooted in this Nation’s history and tradition”).
25 Exposure to high fines triggers procedural protections, as the Supreme Court
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1 explained in *Southern Union Co. v. United States*, 567 U.S. 343, 349-50 (2012),
2 which held that the rule in *Apprendi v. New Jersey* applies to criminal fines. *Id.*
3 (citing *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000), which held that a
4 defendant has a Sixth Amendment right to jury trial on sentencing facts that
5 increase the statutory maximum punishment). “[W]e have never distinguished one
6 form of punishment from another,” the Supreme Court reasoned in *Southern*
7 *Union*, so the constitutional protection afforded by *Apprendi* applies “whether the
8 sentence is a criminal fine or imprisonment or death.” *Id.*

9
10
11 In felony prosecutions in Nevada, the accused receives far greater
12 protections than those accused of misdemeanors, including a preliminary hearing,
13 right to counsel, jury trial, a twelve-person jury, and a right to appeal to the Nevada
14 Supreme Court.⁶ Many of these are federal constitutional rights. *See, e.g., Gideon*
15 *v. Wainwright*, 372 U.S. 335, 344 (1963) (right to appointed counsel in felony
16 cases); *Duncan v. Louisiana*, 391 U.S. 145, 158 (1968) (right to jury trial for non-
17 petty offenses).

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24 ⁶ *See e.g.*, NRS 173.035 (requiring preliminary hearing for felony and gross
25 misdemeanor charges); NRS 178.397 (providing right to counsel to those charged
26 with a felony and gross misdemeanor); NRS 175.011 (providing district court trials
27 “must” be tried by jury); NRS 175.021 (providing juries “must” consist of 12
28 jurors unless the trial takes place in justice court, in which case the jury “must
consistent 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 In every other context, a defendant like Mr. Maffit, who faces felony-level
2 fines, is guaranteed far greater procedural protections under the U.S. Constitution,
3 the Nevada Constitution, and Nevada statutes. Denying him these protections here
4 would deny him due process.
5

6
7 **F. Mr. Maffit is entitled to a jury trial because contracting without a**
8 **license is a “serious” offense.**

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

4 1. The charged offense is “serious” for purposes of the Sixth Amendment.
5

6 The severe financial punishments for the charged offense reflect that the
7 Nevada Legislature considers it a serious offense. To determine whether an offense
8 is “serious” for purposes of the right to jury trial, “[t]he best indicator of society’s
9 views is the maximum penalty set by the legislature.” *See Andersen*, 135 Nev. at
10 323-324 (quoting *United States v. Nachtigal*, 507 U.S. 1, 3 (1993)). This inquiry
11 focuses on “*whether a particular legislature deemed a particular offense ‘serious.’*
12 ” *Id.* (emphasis original) (quoting *Nachtigal*, 507 U.S. at 4 and *Blanton*, 489 U.S. at
13 545 n.11).
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17 Similar to *Andersen*, the 2015 amendments to NRS 624.750 transformed the
18 charged offense from a routine misdemeanor to a serious offense. *Andersen*, 135
19 Nev. at 323-324. In *Andersen*, the Nevada Supreme Court found it significant that
20 the Nevada Legislature had in 2015 added the loss of the right to bear a firearm as a
21 penalty for first offense domestic violence. *Id.* This “new penalty,” the Court
22 explained, “clearly reflect[s] a legislative determination that the offense [of
23 misdemeanor domestic battery] is a serious one.” *Id.* at 323-324. Before the 2015
24 amendments the charged offense was a routine misdemeanor punishable by “a fine
25 of not more than \$1,000.” *See* A.B. 137, 2015 Leg., 78th Sess. at 5 (Nev. 2015)
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1 (noting amendments). Today it is a serious offense: In addition to a possible six
2 months in jail, NRS 624.750(2)(a), Mr. Maffit faces severe, cumulative criminal
3 fines, including a \$4,000 fine, NRS 624.750(2)(a), an uncapped “fine enhancement,”
4 NRS 624.750(3), plus costs, damages, and an administrative fine, *see* NRS
5 624.710(1); NRS 624.700. The possible criminal penalties far exceed the \$1,000
6 statutory maximum fine for misdemeanors. *See* NRS 193.120(3), NRS 193.150(1).
7

8
9 The “increased fine structure” reflects the Nevada Legislature’s penal goal of
10 punishing this offense more harshly in order to deter violations. *See Minutes of the*
11 *Nev. St. Legislature: Hearing on Assembly Bill No. 137 Before the Assembly Comm.*
12 *on Com. and Lab.*, 2015 Leg., 78th Sess. 4 (April March 2, 2015). The bill sponsor,
13 Assemblyman John Ellison, justified the need for more severe fines with an example
14 of an unlicensed contractor who won a bid over two licensed contractors for a
15 \$160,000 project, “paid the \$250 fine,” and “went on to his next project.” *Id.* at 5.
16 Assemblyman Ellison added: “*That is the reason we are trying to put some teeth into*
17 *this.*” *Id.* (emphasis added). As a first offense, that example could result in a
18 misdemeanor conviction resulting in \$20,000 in criminal fine (a \$4,000 fine plus a
19 \$16,000 fine enhancement), *i.e.*, twenty times the maximum \$1,000 fine for a routine
20 misdemeanor. The legislature intentionally increased these financial penalties to
21 make this a more serious offense.
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27 2. The risk of excessive fines reflects that the charged offense is “serious.”
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1 That Mr. Maffit’s potential punishment involves high fines rather than a
2 state prison sentence or firearm ban does not diminish the seriousness of the
3 punishment. The Supreme Court has made clear that criminal fines are serious
4 punishments that are subject to meaningful constitutional limits under the Eighth
5 Amendment.

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

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

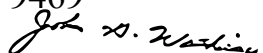
CONCLUSION

For the reasons stated, Mr. Maffit respectfully requests that this Court issue a writ of mandamus and/or prohibition reversing the district court's denial of Mr. Maffit's petition for extraordinary relief and ordering that the offense charged under NRS 624.700(1)(a) be dismissed. Alternatively, if the case proceeds in Justice Court, Mr. Maffit requests this Court to grant a writ of mandamus recognizing his right to a jury on the charged offense.

DATED this 4th day of February, 2022.

Respectfully submitted,

BY: 
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CERTIFICATE OF COMPLIANCE

1
2 1. I hereby certify that this brief complies with the formatting requirements
3 of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style
4 requirements of NRAP 32(a)(6) because:
5

6 ☐ This brief has been prepared in a proportionally spaced typeface
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17 ----- words or ----- lines of text, or
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20 3. Finally, I hereby certify that I have read this appellate brief,
21 and to the best of my knowledge, information, and belief, it
22 is not frivolous or interposed for any improper purpose. I
23 further certify that this brief complies with all applicable
24 Nevada Rules of Appellate Procedure, in particular NRAP
25 28(e)(1), which requires every assertion in the brief regarding
26 matters in the record to be supported by a reference to the page
27
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1 and volume number, if any, of the transcript or appendix where
2 the matter relied on it to be found. I understand that I may be
3 subject to sanctions in the event that the accompanying brief
4 is not in conformity with the requirements of the Nevada Rule
5 of Appellant Procedure.
6
7

8 Dated this 4th day of February, 2022.
9

10 

11 Michael D. Pariente, Esquire
12

13 **DECLARATION AND VERIFICATION IN SUPPORT OF PETITION**
14 **FOR WRIT OF MANDAMUS AND/OR PROHIBITION**

15 I, MICHAEL D. PARIENTE, ESQUIRE makes the following Declaration
16 under the penalty of perjury and declares as follows:
17

- 18 1. Your Declarant is a duly licensed Attorney at Law in the State of
19 Nevada;
- 20 2. Your Declarant represents DAVID MAFFIT on his Petition for Writ
21 of Mandamus;
- 22 3. Your Declarant verifies that the facts for the Petition is within the
23 knowledge of your Declarant;
- 24 4. Your Declarant argues that Judge Trujillo's finding Nevada's
25 contracting without a license statute is a misdemeanor not warranting
26
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1 a jury trial conflicts with the Nevada's statute and case law defining
2 felonies, gross misdemeanors, and misdemeanors.

3 5. Your Declarant on the authority of David Maffit requests that this
4
5 Court issue a Writ of Mandamus.

6 FURTHER YOUR DECLARANT SAYETH NAUGHT

7 I declare under the penalty of perjury that the foregoing is true and correct.
8

9
10 Executed on this 4th day of February, 2022.

11
12 

13 Michael D. Pariente, Esq.
14

15 **DECLARATION OF COUNSEL**

16 STATE OF NEVADA)
17)
18 COUNTY OF CLARK)

19 I, Michael, being first duly sworn according to law, upon oath, deposes
20 and says:

21
22 1. Your declarant is an Attorney at Law duly licensed to practice in all
23 courts in the State of Nevada;

24
25 2. Your declarant is the Attorney of record for the Defendant herein;

26 FURTHER YOUR DECLARANT SAYETH NAUGHT.

27 

28 MICHAEL D. PARIENTE, ESQ.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of THE PARIENTE LAW FIRM, P.C., and that on the date shown below, I caused service to be completed by:

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<input checked="" type="checkbox"/>	
<input type="checkbox"/>	depositing for mailing in the U.S. mail with sufficient postage affixed thereto
<input type="checkbox"/>	delivery via facsimile machine to fax no. <u>[fax number]</u>

a true and correct copy of the attached document addressed to:

Steven Wolfson.
District Attorney
Clark County District
Attorney's Office
200 Lewis Ave.
Las Vegas, NV 89101

Judge Monica Trujillo
District Court Judge Dept. 19
200 Lewis Ave.
Las Vegas, NV 89101



Christopher Barden,
Sr. Paralegal for,
Michael D. Pariente