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8  
9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 STATE OF NEVADA,  
12  
13 Plaintiff/Respondent,  
14  
15 vs.  
16 JESSE REED LAW,  
Defendant/Petitioner.

Case No. C-23-379122-3  
Dept. No. XVIII

17 **RETURN AND RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS (PRE-TRIAL)**

18 COMES NOW, KEVIN MCMAHILL, Sheriff of Clark County, Nevada, Respondent, through  
19 his counsel, AARON D. FORD, Attorney General, through ALISSA ENGLER, Chief Deputy Attorney  
20 General in response to the Petition for Writ of Habeas Corpus filed by Petitioners Michael J. McDonald,  
21 Jess Reed Law and Eileen A. Rice in the above-entitled Court, and states as follows:

22 Respondent denies paragraphs 3 and 4 on pages one and two of Petitioners' Petition. The  
23 remainder of the assertions included on pages one and two of the Petitioners' Petition do not require  
24 admission or denial. The Petitioner is in the constructive custody of KEVIN MCMAHILL, Clark County  
25 Sheriff, respondent herein, pursuant to a Criminal Indictment filed on December 6, 2023, and  
26 incorporated by reference herein.

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1 WHEREFORE, Respondent prays that the Writ of Habeas Corpus be discharged, and the Petition  
2 be dismissed.

3 DATED this 8<sup>th</sup> day of February, 2024.

4 Submitted by:

5 AARON D. FORD  
6 Attorney General

7 By: /s/ Alissa Engler  
8 ALISSA ENGLER (Bar No. 11940)  
9 Chief Deputy Attorney General

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION**

12 On December 14, 2020, Petitioners, Michael J. McDonald (hereinafter “MCDONALD”), James  
13 Walter DeGraffenreid III (hereinafter “DEGRAFFENREID”), Jesse Reed Law (hereinafter “LAW”),  
14 Duward James Hindle III (hereinafter “HINDLE”), Shawn Michael Meehan (hereinafter “MEEHAN”),  
15 and Eileen A. Rice (hereinafter “RICE”), collectively referred to throughout as (“Petitioners”), stood  
16 outside on the steps of the Legislative Building in Carson City, Nevada, to participate in a prearranged  
17 meeting to sign, certify and cast what Petitioners titled as “Certificate of the Votes of the 2020 Electors  
18 from Nevada.” The Petitioners broadcast this fraudulent vote to the world via Right Side Broadcasting,  
19 which posted the video on Facebook and other social media platforms. *See Exhibit 6A – Grand Jury  
20 Transcript (GJT) Volume 2, November 28, 2023, at 9:4-16.*

21 This meeting on the steps of the Nevada Legislature was but a moment in a longer process of  
22 coordination—a conspiracy—by Petitioners via telephone communications, text messages, social media  
23 platforms and emails. Petitioners coordinated their strategy surrounding the operation of the meeting and  
24 drafting of the certificates with representatives of then President Donald Trump’s re-election campaign,  
25 members of the Nevada Republican Party, and other individuals from states where the presidential  
26 election margins were expected to be close or highly contested.

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1 Petitioners executed the documents in Carson City, Nevada on December 14, 2020. Petitioners  
2 traveled from diverse locations throughout Nevada to attend the meeting in Carson City, including Las  
3 Vegas, Henderson, Minden, Virginia City, Zephyr Cove and Gardnerville.

4 By executing the documents, Petitioners falsely held themselves out to be “duly elected and  
5 qualified Electors for President and Vice President of the Unites States of America from the State of  
6 Nevada,” as was written on the Certificates and stated in the meeting. *See Exhibit 4.* After Petitioners  
7 signed the documents, DeGraffenreid drove more than ten miles to Douglas County. From Douglas  
8 County, he mailed the Certificates to the Nevada Secretary of State in Carson City, the U.S. District Court  
9 for the District of Nevada in Las Vegas, and the Archivist of the United States and the President of the  
10 Senate, both in Washington D.C. The U.S. Postal Service then delivered envelopes containing the forged  
11 certificates to these public offices across Nevada and the United States and thereby offered them for filing  
12 or recording.

## 13 **II. PROCEDURAL HISTORY**

14 On December 6, 2023, the State of Nevada charged Petitioners by way of Indictment with the  
15 following: one (1) count of Offering False Instrument For Filing Or Record, a category “C” Felony in  
16 violation of NRS 239.330 and one (1) count of Uttering Forged Instruments: Forgery, a category “D”  
17 Felony in violation of NRS 205.110. On December 18, 2023, Petitioners pleaded not guilty and waived  
18 their right to a speedy trial within sixty (60) days. Calendar Call is set for March 4, 2023, and Jury Trial  
19 is scheduled to commence on March 11, 2023.

20 On January 29, 2024, McDonald, Rice and Law filed the instant Petition for Writ of Habeas  
21 Corpus and Joint Memorandum of Points and Authorities (“Petition”). On January 29, 2024, Hindle,  
22 Meehan and DeGraffenreid filed Joinders. Rice also filed a contemporaneous Motion to Dismiss on  
23 January 29, 2024, which all other Petitioners joined in separate filings. The State responds as follows.

## 24 **III. FACTUAL HISTORY**

### 25 **a. Electoral College Process**

26 The Office of the Federal Register is part of the National Archives and Records Administration.  
27 *GJT Vol 1, at 10:9-11.* The National Archives and Records Administration collects, stores, and maintains  
28 all permanent federal records for the federal government which includes presidential documents,

1 documents related to the Electoral College, and documents that federal agencies produce. *GJT Vol 1,*  
2 *12:11-16.* Miriam Vincent is the Acting Director of Legal Affairs and Policy for the Office of the Federal  
3 Register. *GJT Vol 1, 10:12-22.* Among other duties assigned by the Archivist, The Office of the Federal  
4 Register administers the Electoral College. *GJT Vol 1, 10:20 – 11:7.* The Office of the Federal Register  
5 receives Certificates of Ascertainment and Vote from all 50 states and the District of Columbia each  
6 election cycle, stores them in a safe for a period of time (generally more than a year but less than three  
7 years), and then forwards those to the National Archives where they become part of the official permanent  
8 public federal records collection. *GJT Vol 1, 12:20 – 14:21.* The Certificate of Ascertainment is a  
9 document required by federal law that lists the electors from the major parties as well as the number of  
10 votes received. *Grand Jury Transcript (GJT) Volume 3, December 5, 2023 at 74:22-25.* The Certificate  
11 of Ascertainment is combined with the Certificate of Vote to show and affirm by the individuals who  
12 sign it, who received the popular votes and therefore who are the appropriate electors to cast their votes  
13 for the President of the United States. *GJT Vol 3 at 75:12-18.* When Certificates of Vote and  
14 Ascertainment are received by the National Archives, attorneys in the Office of the Federal Register  
15 review them to determine whether they meet the requirements under the Electoral Count Act. *GJT Vol 1,*  
16 *17:11 – 18:15.*

17         During presidential elections, the Nevada Secretary of State executes and enforces federal and  
18 state laws related to elections, which includes candidate filing through the final transmittal of information  
19 to the President of the Senate. *GJT Vol 3 at 65:18-66:11.* In 2020, Barbara Cegavske was the Nevada  
20 Secretary of State. *GJT Vol 3, at 66:19-21.* Mark Wlaschin is the Deputy Secretary of State for Elections,  
21 and in that role, he works directly with the Secretary of State to execute and enforce laws relating to  
22 elections. *Id.* One such law is The Uniform Faithful Electors Statute, which is codified in NRS 298, and  
23 the intent of the statute is to ensure that the presidential electors cast their votes for whoever won the  
24 popular vote in the state. *GJT Vol 3 at 72:24-73:5.* A nominee for presidential elector is an individual  
25 identified by the major parties that have a presidential candidate on the ballot, and the prevailing party of  
26 the popular vote are the nominees that become the qualified electors for the State of Nevada. *GJT Vol 3*  
27 *at 73:11-74:6.* At the conclusion of a presidential election, the Nevada Secretary of State receives the  
28 election results from each of the 17 counties and provides the results to the Nevada Supreme Court for

1 the Court to canvass the general election on the fourth Tuesday in November. *GJT Vol 3 at 68:18-23;*  
2 *69:16-71:25.*

3         Once the results are certified, the Certificate of Ascertainment is completed and sent to four  
4 places: the Nevada Secretary of State, the Chief Judge of the U.S. District Court for the District of Nevada  
5 – Hon. Miranda Du, the Archivist of the United States, and the President of the U.S. Senate. *GJT Vol 3*  
6 *at 75:3-9.* The Certificate of Ascertainment must be created no later than six days before the meeting of  
7 the Electoral College, also known as the ‘safe harbor day’ under the Electoral Count Act. *GJT Vol 3 at*  
8 *75:19-25; 81:1-82:1; GJ Exhibit 22.* In Nevada, the Office of the Secretary of State works with the  
9 Governor’s Office to have the Certificate of Ascertainment drafted and signed by the Governor and the  
10 Secretary of State, and the Secretary of State sends the documents. *GJT Vol 3 at 76:3-10.* The Certificate  
11 of Ascertainment and the Certificate of Vote are prepared exclusively by the Secretary of State,  
12 specifically Mr. Wlaschin and his staff. *GJT Vol 3 at 76:11-77:3; GJT Vol 3 at 84:4-21; GJ Exhibit 5.*  
13 Per Nevada law, the Nevada Secretary of State must preside over the meeting of the Nevada Electoral  
14 College to ensure the electors sign the Certificate of Vote for the candidate who won the popular vote.  
15 *GJT Vol 3 at 83:1-84:3.* Following the meeting of the Electoral College, the Nevada Secretary of State  
16 will compile the Certificate of Ascertainment, Certificate of Vote and a Certificate of Final Determination  
17 of Contests concerning Presidential Electors and send seven copies to the Secretary of State, Chief Judge  
18 of the U.S. District Court, the Archivist of the United States, and the President of the U.S. Senate. *GJT*  
19 *Vol 3 at 83:21-84:3 86:14-89:12.*

20                 **b. 2020 Presidential Election**

21         Election day was November 3, 2020. *GJ Exhibit 22.* Joseph R. Biden for President of the United  
22 States and Kamala D. Harris for Vice-President of the United States received the highest number of  
23 popular votes in the State of Nevada. *GJ Exhibit 24; GJT Vol 3 at 94:5-12.* The Nevada Supreme Court  
24 canvass certifying the results of the election occurred on November 24, 2020.<sup>1</sup> *GJT Vol 3 at 68:18-23.*  
25 Following the canvass required by NRS 293.395(2), the Governor of Nevada transmitted the Certificate  
26 of Ascertainment to the National Archives on December 2, 2020, which certified the Democratic Party

27 \_\_\_\_\_  
28 <sup>1</sup> Mr. Wlaschin testified that the canvass occurred on the 4<sup>th</sup> Tuesday of November, which he believed was the 23<sup>rd</sup> of  
November. The 4<sup>th</sup> Tuesday in November 2020 was November 24.

1 Electors received the highest number of votes cast for presidential electors in the 2020 General Election.  
2 *GJ Exhibit 22; GJT Vol 3 at 78:10-17.* According to the Certificate of Ascertainment, the Democratic  
3 electors received 703,486 votes, a margin of victory of 33,596 over the Republican elector nominees.  
4 *GJT Vol 3 at 77:8-21.* The Certificate of Ascertainment was completed by the safe harbor date, which  
5 was December 8, 2020. *GJT Vol 3 at 75:19-25.* On December 8, 2020, the National Archives received a  
6 Certificate of Ascertainment from the Nevada Secretary of State. *GJT Vol 1, 16:19 – 17:5.*

7 On November 17, 2020, the last day allowed by Nevada law to contest the election, Petitioners  
8 as Contestants filed a Statement of Contest Challenging the results of the 2020 presidential election in  
9 Nevada. *GJ Exhibit 22; GJT Vol 3 at 57:15-25* The Statement sought an order from the First Judicial  
10 District Court of the State of Nevada declaring President Donald Trump the winner in Nevada and  
11 certifying Contestants as the State’s duly elected presidential electors. *Id.* Alternatively, the Statement  
12 sought an order holding President-elect Joe Biden’s victory in Nevada be declared null and void and that  
13 the November 3 election “be annulled and no candidate for elector for the office of President of the United  
14 States of American be certified from the State of Nevada.” *Id.* On December 3, 2020, the First Judicial  
15 District Court held a hearing on the Statement of Contest where each party was able to present evidence.  
16 *Id. see also GJT Vol 2, November 28, 2023 at 9:20-11:18, 17:19; GJ Exhibit 6A.*<sup>2</sup> On December 4, 2020,  
17 the Honorable District Court Judge James Todd Russell issued an Order Granting Motion to Dismiss  
18 Statement of Contest. *GJ Exhibit 22.* The Petitioners through their counsel filed an appeal with the  
19 Nevada Supreme Court on December 7, 2020. *Id.* Following an expedited briefing schedule, the Nevada  
20 Supreme Court issued an Order of Affirmance on December 8, 2020, holding:

21 “Despite our earlier order asking appellants to identify specific findings with which they  
22 take issue, appellants have not pointed to any unsupported factual findings, and we have  
identified none. The clerk of this court shall issue the remittitur forthwith.”

23 *GJT Vol 3 at 61:17-25; GJ Exhibit 22.*

24 After receiving a copy of the Order of Affirmance concluding the election contest, the Nevada  
25 Secretary of State planned the meeting of the Electoral College with the Democratic party’s identified  
26 electors. *GJT Vol 3 at 82:4-14.* The meeting of the Nevada Electoral College for the 2020 Presidential

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27 <sup>2</sup> Petitioner Law was interviewed as part of the recording and acknowledged Petitioners had the opportunity to present  
28 evidence to the court in support of their claims, but stated he was disappointed with the legal process in Nevada. *Minutes*  
*32:05-35:36.*

1 Election was held on the morning of December 14, 2020, and presided over by then Nevada Secretary of  
2 State Barbara Cegavske. *GJT Vol 3 at 72:3-4*. Following the meeting of the Electoral College, Mr.  
3 Wlaschin and his staff compiled the Certificate of Ascertainment, Certificate of Vote and the Certificate  
4 of Final Determination of Contests concerning Presidential Electors and sent seven copies each to the  
5 Secretary of State, Chief Judge of the U.S. District Court for the District of Nevada, the Archivist of the  
6 United States, and the President of the U.S. Senate. *GJT Vol 3 at 83:21-84:3 86:14-89:12*. In 2020, the  
7 true and accurate copy of the Certificate of Vote for the Nevada 2020 presidential election contained the  
8 state seal, was signed by the Democratic electors, and the signatures matched the names on the Certificate  
9 of Ascertainment. *GJT Vol 3 at 85:8-86:11; Exhibit 5*.

10 On December 17, 2020, the National Archives received a Certificate of Ascertainment paired  
11 with a Certificate of Vote from the Nevada Secretary of State. *GJT Vol 1 at 15:1 – 17:5; GJ Exhibit 5*.  
12 The National Archives received a Certificate of Final Determination from the Nevada Secretary of State;  
13 this document affirms that there are no remaining unresolved legal controversies regarding the election,  
14 and that the electors indicated on the Certificate of Ascertainment were the individuals appointed at the  
15 meeting of the electors. *GJT Vol 1 at 19:15 – 20:13; GJT Vol 3 at 86:14-87:7*.

16 **c. Fraudulent Activity**

17 Around November 10, 2020, James Troupis contacted Kenneth Chesebro and asked that he do  
18 some legal work related to election challenges in Wisconsin. *GJT Vol 2 at 26:11 – 27:18*. Subsequently,  
19 Chesebro drafted a series of memoranda in connection with his work and on behalf of the Trump 2020  
20 campaign. *GJT Vol 2 at 27:19-23*. In a November 18, 2020 memorandum, Chesebro suggested that in  
21 order to have votes counted for Donald Trump, in the event the Wisconsin election litigation were  
22 resolved in Trump's favor, Trump electors would have to cast ballots by December 14, 2020, in order to  
23 comply with federal statutory requirements. *GJT Vol 2 at 28:13 – 29:15*.

24 Subsequently, Chesebro drafted a memo describing the requirements under various federal and  
25 state laws, that would have to be observed by Trump electors from states with ongoing litigation. *GJT*  
26 *Vol 2 at 30:1 – 31:15*. Eventually, Chesebro, at the request of then Trump 2020 deputy campaign manager  
27 Justin Clark, drafted voting documents based on those used in Wisconsin, for electors in other states to  
28 review and adapt for use in the electors' respective states. *GJT Vol 2 at 32:10 – 33:13*. On December 10

1 and 11, 2020, Chesebro forwarded those draft documents to James DeGraffenreid, Michael McDonald,  
2 and Jesse Law. *GJT Vol 2 at 33:14-21, 34:13 – 35:3, GJ Exhibit 27*. The documents Chesebro provided  
3 to DeGraffenreid, McDonald and Law consisted of a memorandum, and drafts of ballots, certificate  
4 announcing result of voting for president and vice president, and a cover letter to be provided with the  
5 executed certificates. *GJT Vol 2 at 35:4-20*.

6 Chesebro asked DeGraffenreid whether there was litigation pending in Nevada connected to the  
7 election, but he did not receive a response. *GJT Vol 2 at 35:21 – 36:4*. Chesebro’s view was that the  
8 existence of pending litigation was the only reason to cast alternate elector votes. *GJT Vol 2 at 36:5-15*.  
9 After Chesebro sent the draft documents, DeGraffenried circulated the documents for editing to  
10 McDonald, Law, Meehan, Hindle and Rice via e-mail, with the final edits made on December 13, 2020.  
11 *GJ Exhibit 28*. The Documents were titled “CERTIFICATE OF THE VOTES OF THE 2020 ELECTORS  
12 FROM NEVADA,” wherein the Petitioners declare themselves “the duly elected and qualified Electors  
13 for President and Vice President of the United States of America from the State of Nevada.” *GJ Exhibit*  
14 *4 and Exhibit 6A*. Despite the denial of their election contest by the Nevada Supreme Court, the  
15 Petitioners, who reside in several locations throughout Nevada, including Las Vegas and Henderson, met  
16 in Carson City, Nevada, on December 14, 2020, to execute the documents. *GJ Exhibits 6A, 13-18*. Law  
17 printed and provided copies of the documents to McDonald, DeGraffenreid, Meehan, Hindle and Rice.  
18 *GJ Exhibit 28*. The Petitioners signed and executed the documents. *GJ Exhibit 29*.

19 The Petitioners broadcast the vote nationally via Right Side Broadcasting, which posted the video  
20 on Facebook and other social media platforms. *GJ Exhibit 6A; GJT Vol 2 at 9:4-16*. In response to a  
21 subpoena, Right Side Broadcasting produced two videos, one edited version totaling 38 minutes, 46  
22 second in length, and one raw footage that was a little over an hour in length, which depicted “the six  
23 Nevada Republican nominee electors executing their ballots for the Electoral College election of the U.S  
24 president and vice president,” in Carson City on December 14, 2020. See *GJT Vol 2 at 9:4-10:25*.  
25 Petitioners were identified as the individuals depicted in the video by comparing the individuals in the  
26 Right Side Broadcasting video to the certified copies of the Petitioners Nevada Driver’s License records.  
27 *GJT Vol 2 at 9:1-3, 12:4-13:1; GJ Exhibits 7-18*.

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1 Following the meeting, DeGraffenreid mailed the completed documents from Minden, Nevada,  
2 with a return mailing address of Michael J. McDonald, Nevada Republican Party at 840 S. Rancho Dr.  
3 4-800, Las Vegas Nevada 89106. *See GJ Exhibit 4, Exhibit 21 and Exhibit 29; GJT Vol 1 at 26:4-21.*  
4 The four mailings were paid for at the same time by the same person with one payment method, all  
5 payments processed on December 14, 2020, at exactly 4:16:02 PM. *See GJT Vol 3 at 23; Exhibit 21.*  
6 They were postmarked December 14, 2020. *GJT Vol 1 at 26:4-21; GJ Exhibit 21.*

7 The documents purporting to cast Nevada's electoral votes for Donald J. Trump and Michael R.  
8 Pence were sent to following locations by Petitioners: (1) Archivist of the United States, 700 Pennsylvania  
9 Avenue NW, Washington D.C., 20408; (2) President of the Senate, United States Senate, Washington  
10 D.C. 20510; (3) Secretary of State, State of Nevada, 101 N. Carson St., Suite 3, Carson City, Nevada  
11 89701; and (4) Honorable Miranda M. Du, Chief Judge, U.S. District Court, District of Nevada, Lloyd  
12 D. George Courthouse, 333 Las Vegas Blvd South, Las Vegas, N.V. 89101. *GJ Exhibit 4, 20, 21 and 29;*  
13 *GJT Vol 1 at 26:4-21.*

14 On December 15, 2020, the Nevada Secretary of State received the forged electoral votes sent by  
15 Petitioners. *GJ Exhibit 21; GJT 89-94.* After consulting with the Secretary of State, who was in Las  
16 Vegas, Mr. Wlaschin returned the documents to sender, along with a letter that stated the following:

17 "Enclosed please find documents received December 15, 2020 purporting to be votes of  
18 the Nevada Electors in the December 14, 2020 vote of the Electoral College. Please be  
19 advised that on December 14, 2020, the lawful Nevada Electors who were identified on  
20 the official Certificate of Ascertainment cast their ballots for President of the United States  
and Vice-president of the United States pursuant to federal and state law in a meeting  
conducted by the Nevada Secretary of State.

21 Nevada law requires that all electors cast their ballots for the winner of the popular votes  
22 in Nevada. As such the lawful electors cast their ballots for Joseph R. Biden for President  
23 of the United States and for Kamala D. Harris for Vice-President of the United States, in  
24 accordance with Nevada Law and the results of the 2020 General Election as certified by  
the Nevada Supreme Court on November 24, 2020.

25 We are returning these documents as they do not meet the statutory requirement for filing  
with our office."

26 *GJ Exhibit 24, GJT Vol 3 at 93:20-94:15.*

27 On December 16, 2020, the U.S. District Court received the forged electoral votes sent by  
28 Petitioners. *See Exhibit 21.* On December 21, 2020, the President of the United States Senate received

1 the forged electoral votes sent by Petitioners. *GJ Exhibit 20 and 21; GJT Vol 3 at 53*. On December 22,  
2 2020, the National Archives received the forged electoral votes for Donald Trump and Mike Pence, for  
3 President and Vice President. *GJT Vol 1 at 21:19 – 22:12. Grand Jury Exhibit 4*. These appeared to be  
4 signed by Michael McDonald, James DeGraffenreid, Durward James Hindle III, Jesse Law, Shawn  
5 Meehan, and Eileen Rice. *GJT Vol 1 at 24:8-14, 25:24*. These documents stated the signatories were,  
6 “the duly elected and qualified Electors for President and Vice President of the United States of America  
7 from the State of Nevada.” *GJT Vol 1 at 24:22 – 25:2, 25:9-14*.

#### 8 IV. LEGAL ARGUMENT

9 NRS 34.500 sets forth a number of grounds upon which a court may grant a petition for habeas  
10 corpus, including (i) lack of probable cause, and (ii) “the process is defective in some matter of substance  
11 required by law, rendering it void.” In the present Petition, Petitioners make the following arguments:

- 12 1. The grand jury impaneled in Clark County lacked jurisdiction to return a true bill in this case;
- 13 2. Insufficient evidence was presented to establish probable cause for the offense alleged in the  
14 Indictment;
- 15 3. The State failed to present exculpatory evidence and presented false or misleading testimony.

16 For the following reasons, the Petitioners’ arguments fail, and the State respectfully requests the Court  
17 deny their Petition.

#### 18 A. Clark County is a Proper Venue for this Case and the grand jury therefore had 19 jurisdiction to return a true bill.

20 “The grand jury may inquire into all public offenses triable in the district court or in a Justice  
21 Court, committed within the territorial jurisdiction of the district court for which it is impaneled.” NRS  
22 172.105.

23 Pursuant to NRS 171.030, “When a public offense is committed in part in one county and in part  
24 in another or the acts or effects thereof constituting or requisite to the consummation of the offense occur  
25 in two or more counties, **the venue is in either county.**” (**Emphasis added.**) Venue does not involve an  
26 element of the crime or relate to guilt or innocence; the State need only prove venue by a preponderance  
27 of the evidence. *McNamara v. State*, 132 Nev. 606, 615-616, 377 P.3d 106, 113 (2016). Venue may be  
28 established by circumstantial evidence. *James v. State*, 105 Nev. 873, 875, 784 P.2d 965, 967 (1989).

1 “Where there is evidence of a preparatory act plus intent in that county, an act requisite to the  
2 consummation of the charged offense occurred there, and a grand jury may indict a defendant of that  
3 offense.” *Martinez Guzman v. Second Judicial District Court in and For County of Washoe*, 137 Nev.  
4 599, 605, 496 P.3d 572, 577 (2021). In the instant case, venue is proper in several counties of the state,  
5 including Clark County.

6 First and foremost, Petitioners sent one of four completed forged documents to Chief Judge  
7 Miranda Du by mailing it to the federal courthouse in Las Vegas, Nevada, and contrary to Petitioners  
8 argument that the acts were completed upon placing the document in the mail, the offering or uttering is  
9 not completed until it reached the intended destination.

10 Secondly, as outlined in more detail in the State’s Opposition to Defendant Rice’s Motion to  
11 Dismiss, the State has provided sufficient facts for this Court to find that under *Martinez-Guzman*,  
12 Petitioners had both the requisite intent and performed preparatory acts in Clark County.

13 Additionally, these offenses trigger the “or effects” language of NRS 171.030 in a way that was  
14 not at issue in *Martinez-Guzman*. The State has alleged these crimes were committed as a conspiracy  
15 amongst the Petitioners. Petitioners McDonald and Law were participating in the drafting and revision  
16 process, and there is evidence that they were in Clark County when they did those acts because they  
17 reside in Las Vegas and Henderson, respectively. Additionally, they formed their intent to offer these  
18 documents during the planning and preparation stages. Thus, venue is proper wherever one or more  
19 members of the conspiracy committed acts contributing to the crime.

20 The State has filed, contemporaneous to this Response, an Opposition to Defendant Rice’s Motion  
21 to Dismiss and hereby incorporates the arguments contained in the Opposition as though they were fully  
22 set forth herein.

23 **B. The State Presented Sufficient Evidence to Establish Probable Cause for Counts  
I and II of the Criminal Indictment.**

24 “A criminal defendant may be bound over for trial if the evidence adduced is sufficient to establish  
25 probable cause that a crime has been committed and the defendant has committed it.” *Sheriff, Clark Cnty.*

1 v. *Lyons*, 96 Nev. 298, 299, 607 P.2d 590, 591 (1980) (*State v. von Brincken*, 86 Nev. 769, 476 P.2d 733  
2 (1970)).<sup>3</sup>

3 The State only has to present enough evidence to support a reasonable inference that the accused  
4 committed the crime and does not need to negate all possible inferences as to doubt. *See Lamb v. Holsten*,  
5 85 Nev. 566, 568, 459 P.2d 771, 772 (1969); *Johnson v. State*, 82 Nev. 338, 341, 418 P.2d 495, 496  
6 (1966).

7 Further, the State may present a case based solely on circumstantial evidence. *See Howard v.*  
8 *Sheriff*, 93 Nev. 30, 31, 559 P.2d 827, 827 (1977).

9 Finally, the Nevada Supreme Court has explicitly held that a probable cause hearing is “not a  
10 substitute for trial,” and that the “full and complete exploration of all facets of the case” should be  
11 reserved for trial. *Marcum v. Sheriff*, 85 Nev. 175, 178, 451 P.2d 845, 847 (1969); *see also, Robertson v.*  
12 *Sheriff*, 85 Nev. 681, 683, 462 P.2d 528, 529 (1969). A pretrial writ of habeas corpus “will issue when  
13 the evidence is insufficient to establish probable cause to believe that the accused committed the charged  
14 offense.” *Sheriff, Clark Cnty. v. Badillo*, 95 Nev. 593, 594, 600 P.2d 221, 222 (1979) (citing *Williams v.*  
15 *Sheriff*, 92 Nev. 543, 554 P.2d 732 (1976)).

16 The State presented ample evidence to the Grand Jury of the falsity of the documents offered and  
17 uttered by the Petitioners. The Grand Jury correctly returned a true bill, and these Petitioners must,  
18 therefore, be held to answer to these charges.

19 **1. The State presented sufficient evidence to establish probable cause that**  
20 **the Petitioners committed the crime of Offering False Instrument for**  
21 **Filing or Record (Count I).**

22 Under NRS § 239.330, “a person who knowingly procures or offers any false or forged instrument  
23 to be filed, registered or recorded in any public office, which instrument, if genuine, might be filed,  
24 registered or recorded in a public office under any law of this State or of the United States.”

25 Petitioners assert that the State failed to present sufficient evidence to establish probable cause on  
26 three points. First, Petitioners argue that the State failed to provide evidence of falsity. Second, Petitioners

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27 <sup>3</sup> The magistrate may order an accused to answer the charges filed against him or her upon a finding that a public offense  
28 has been committed, and slight or marginal evidence that the defendant committed the crime. *See, Sheriff v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980); *Beasley v. Lamb*, 79 Nev. 78, 80, 378 P.2d 524, 525 (1963); *State v. Fuchs*, 78 Nev. 63, 65, 368 P.2d 869, 869 (1962).

1 argue that the State did not present evidence of knowledge of falsity. And third, Petitioners argue that  
2 errors in the documents show that the State failed to prove that the documents would have been accepted  
3 as genuine.

4 All three arguments fail; the State presented evidence sufficient to establish probable cause on  
5 the necessary elements under the statute: (1) the instrument included a false statement of fact,  
6 (2) Petitioners knew that statement of fact to be false at the time they offered the instrument, and (3) a  
7 Certificate of Vote is an instrument that, “if genuine, might be filed, registered or recorded in a public  
8 office under any law of this State or of the United States.”

- 9 a. The State presented evidence establishing probable cause that the  
10 Petitioners knew the statement that they were the “duly elected and  
11 qualified Electors for the State of Nevada for President and Vice  
12 President of the United States of America from the State of Nevada”  
13 was false at the time the offered the Certificate for filing.

14 To establish that an instrument is “false,” the State only need establish that the instrument  
15 contained a false statement of fact. *Zweifel v. State*, 89 Nev. 242, 243, 510 P.2d 872, 873 (1973). The  
16 State presented evidence to the grand jury that easily meets this standard.

17 Petitioners asserted in a document they titled “CERTIFICATE OF THE VOTES OF THE 2020  
18 ELECTORS FROM NEVADA” that they were the “duly elected and qualified Electors for the State of  
19 Nevada for President and Vice President of the United States of America from the State of Nevada[.]”  
20 *GJ Exhibit 4, GJ 000002*.<sup>4</sup> The passages quoted above are false statements of fact, and the State presented  
21 evidence proving such to the Grand Jury. In fact, Defendants admit they were not “Presidential Electors”  
22 (Petition 28:6-17), Defendants were elector *nominees*: a nominee for presidential elector is an individual  
23 identified by the major parties that have a presidential candidate on the ballot, and the prevailing party of  
24 the popular vote are the nominees that become the qualified electors for the State of Nevada. *GJT Vol 3*  
25 *at 73:11-74:6*.

26 In Nevada, a person becomes a presidential elector only if they are a nominee, and the candidate  
27 from their party then wins the election: “[T]he nominees for presidential elector whose candidates for  
28 President and Vice President receive the highest number of votes in this State at the general election are  
the presidential electors.” NRS § 298.065(1) At the conclusion of a presidential election, the Nevada

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<sup>4</sup> The evidence that proves these documents are also properly termed a forgery is discussed *infra* in section 2(a).

1 Secretary of State receives the election results from each of the 17 counties and provides the results to  
2 the Nevada Supreme Court for the Court to canvass the general election on the fourth Tuesday in  
3 November. *GJT Vol 3 at 68:18-23; 69:16-71:25*. In the 2020 Presidential Election, Joseph R. Biden for  
4 President of the United States and Kamala D. Harris for Vice-President of the United States received the  
5 highest number of popular votes in the State of Nevada. *GJ Exhibit 24; GJT Vol 3 at 94:5-12*. The Nevada  
6 Supreme Court canvass certifying the results of the election occurred on November 24, 2020. *GJT Vol 3*  
7 *at 68:18-23*.

8 The Petitioners were each a party to the election contest and eventual appeal therefrom, in which  
9 the Nevada Supreme Court finally resolved the matter of who had won the 2020 Presidential Election on  
10 December 8, 2020. *See Law v. Whitmer*, 136 Nev. 840, 477 P.3d 1124 (Nev., Dec. 8, 2020) (unpublished  
11 table decision). *GJ Exhibit 24*. And the Nevada Supreme Court ordered that the clerk issue the remittitur  
12 forthwith, which evidences the conclusion of the state appeal and made the order of affirmance a final,  
13 enforceable judgment in the absence of a stay. *GJ Exhibit 24; see also Branch Banking & Trust Co. v.*  
14 *Gerrard*, 134 Nev. 871, 874, 432 P.3d 736, 739 (2018).

15 The question of who won the 2020 Presidential Election in Nevada is not a matter of opinion. The  
16 Nevada Supreme Court is the body empowered to determine the answer to that question both by virtue  
17 of the fact that it is charged with canvassing the election results, and because it is the court of last resort  
18 for election contests in this state. Following the canvass and following the conclusion of the last appeal  
19 from Defendants' election contest, the Nevada Supreme Court returned the same answer: Joseph R. Biden  
20 and Kamala D. Harris had won the popular vote for President and Vice-President of the United States in  
21 Nevada. Defendants' fervent belief or hope that President Trump had won the election is not relevant, no  
22 matter how genuinely held.

23 The assertion that Petitioners had a right to appeal the decision of the Nevada Supreme Court is  
24 of no consequence for two reasons. First, consistent with *Branch Banking*, if Petitioners actually thought  
25 they had some basis to challenge the Nevada Supreme Court's ruling, merely filing a timely petition for  
26 writ of certiorari would have had no legal effect on the finality of the Nevada Supreme Court's judgment  
27 resolving the election contest. As the Nevada Supreme Court noted in *Branch Banking*, filing a timely  
28 petition for writ of certiorari does not render the judgment nonfinal. 134 Nev. 875-76, 432 P.3d at 740

1 (quoting *Glick v. Ballentine Produce, Inc.*, 397 F.2d 590, 594 (8th Cir. 1968). To avoid enforceability of  
2 the Nevada Supreme Court’s final judgment, Petitioners needed to seek an emergency stay from the  
3 Supreme Court of the United States as occurred in *Bush v. Gore*, 531 U.S. 98, 100 (2000), where the  
4 Court granted an emergency application for stay and treated that application as a petition for writ of  
5 certiorari. But Petitioners did not.

6 Petitioners’ failure to seek a stay from the U.S. Supreme Court dovetails with the second reason.  
7 Pursuant to the governing law, the State court’s determination is conclusive. Specifically, Section 2 of  
8 the Electoral Count Act of 1887 states:

9 “That if any State shall have provided, by laws enacted prior to the day fixed for  
10 the appointment of the electors, for its final determination of any controversy or contest  
11 concerning the appointment of all or any of the electors of such State, by judicial or other  
12 methods or procedures, and such determination shall have been made at least six days  
13 before the time fixed for the meeting of the electors, such determination made pursuant to  
14 such law existing on said day, and made at least six days prior to the said time of the  
15 meeting of the electors, **shall be conclusive, and shall govern in the count of the  
16 electoral votes as provided in the Constitution, and as hereinafter regulated, so far  
17 as the ascertainment of the electors appointed by such State is concerned.**”

18 On December 14, 2020, the Petitioners all signed a document that stated, “WE, THE  
19 UNDERSIGNED, being the duly elected and qualified Electors for the State of Nevada for President and  
20 Vice President of the United States of America from the State of Nevada,” before certifying their actions  
21 on that day. *GJ Exhibit 4* at 2 (emphasis in original). Petitioners held themselves out as “being” Nevada’s  
22 electors. And they made that statement in the present tense at a time when such a statement of fact was  
23 false. The suggestion that a future change to their status may someday occur and that such a change would  
24 make that statement true retroactively is unfounded and of no moment. If anything, Petitioners’  
25 acknowledgement that a future change in status was necessary to make their statement true proves that  
26 the statement was false at the time the Petitioners made it.

27 b. The State presented evidence establishing probable cause that the  
28 Petitioners knew that the instrument they offered included false  
statements of fact.

The foregoing also sufficiently demonstrates Petitioners’ *knowledge* of falsity. The Nevada  
Supreme Court resolved the Petitioners’ contest to the election results, affirming the First Judicial District  
Court’s order dismissing Petitioners’ contest on December 8, 2020. And over the ensuing six days—  
although they could have—Petitioners sought no relief from that ruling in the U.S. Supreme Court. Yet

1 Petitioners executed a document that included factual representations that conflicted with the Nevada  
2 Supreme Court’s controlling order of affirmance. The Nevada Supreme Court’s final resolution of  
3 Petitioners’ election contest under state law, which each Petitioner knew of, proves that each Petitioner  
4 had actual knowledge of the falsity of the claims they made in writing six (6) days later.<sup>5</sup>

5 Further, Defendants’ assertion that they lacked the requisite intent because there were numerous  
6 ways in which the Certificate they offered was deficient under relevant statutes, and they “did not try to  
7 create a certificate that could have been mistaken for a real one,” *Petition, 29:5-7*, amounts to an argument  
8 that because the Defendants were not especially skilled forgers, they can’t properly be convicted of these  
9 charges. To say the least, the argument is unconvincing. NRS § 239.330 is clear, it is the offer to file a  
10 false or forged instrument which is criminal: “[A] person who knowingly procures or offers any false or  
11 forged instrument to be filed . . . which instrument, if genuine, might be filed . . . is guilty of a category  
12 C felony[.]” In making this argument, Petitioners cite *Generes v. Justice Court*, 106 Cal.App.3d 678,  
13 682, 165 Cal.Rptr. 222, 224-225 (Cal. Ct. App. 1980) (citations omitted), however, Petitioners minimize  
14 the importance of the holding, which was “it is not necessary to constitute a completed offense that  
15 anyone actually be defrauded.”

16 The fact is, the Petitioners intended to pass their documents off as the Certificates of Votes for  
17 Nevada. Otherwise, why would they have gone through the trouble of signing numerous copies and  
18 sending them to the same government entities that are required to review and process the certificates  
19 under state and federal law. As presented to the Grand Jury, the Petitioners communicated several times  
20 pre-and-post signing that they had hoped their Certificates would be considered by the Vice President on  
21 January 6, 2021. DeGraffenried stated in an email on December 17, 2020, that McDonald, Meehan and  
22 Hindle were cc’d on, that, “We sent out GOP Electoral votes directly to the Senate, as well as other places  
23 where they are required to go. The next step is that they will be opened on Jan 6<sup>th</sup> in the Senate, along  
24 with the ones sent by the SOS for the Dems...” *GJ Exhibit 34*. At the time the Petitioners created,  
25 executed, and sent these certificates, they **were not** the duly elected and qualified electors for the State  
26 of Nevada. Their statement to the contrary was a false statement of fact under NRS § 239.330. They

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27 <sup>5</sup> Jessica Hanson sent an email to the six Petitioners on December 9, 2020, informing them that the Nevada Supreme Court  
28 denied their appeal. This is email is further evidence that the six defendants knew there was not a case in controversy when  
they signed the Certificates on December 14, 2020. *See GJT Volume 3, December 5, 2023, at 55.*

1 offered these certificates without any contingency language or disclaimers. They offered these documents  
2 after their election contest litigation had ended. Ample evidence of all this was presented to the grand  
3 jury, along with evidence of the Petitioners' knowledge of the facts that made their statement false.

4 c. The Genuine Versions of These Instruments are "Filed, Registered, or  
5 Recorded."

6 The genuine Certificate of Vote is drafted by the Nevada Secretary of State and is relied upon to  
7 determine which candidate becomes the President of the United States. It gives meaning to Americans'  
8 right to vote, it memorializes the legal duty of presidential electors to vote faithfully, and ultimately  
9 creates both the opportunity and obligation for one candidate to serve as President. To suggest that this  
10 is anything other than a monumentally important instrument within our system of government, and indeed  
11 our society as a whole, is deeply unserious. Still, Petitioners suggest that their forged and false  
12 "Certificate of the Votes of the 2020 Electors from Nevada" was never intended to be taken seriously,  
13 and therefore no trial should occur to determine whether these documents would correctly be viewed as  
14 having the serious effect of instruments such as fishing licenses, commercial lien filings, or an application  
15 for a loan from the state. *See, State v. Price*, 94 Wash. 2d 810, 620 P.2d 994 (WA 1980); *People v.*  
16 *Gruber*, 2006 WL 2709616 (CA CoA 5<sup>th</sup> 2006) (unreported); *Lewis v. State*, 32 Ariz. 182 (AZ 1927).<sup>6</sup>

17 Petitioners misread the statute. There is no qualitative threshold in the statute requiring that the  
18 false or forged document be good enough to be accepted as genuine. But even if there were, it is hard to  
19 believe the Petitioners claims that there is no evidence of their intent that the documents to be accepted  
20 as genuine when it is evident from watching the video that extensive planning went into the executing of  
21 these forged documents. The six defendants traveled from different regions of Nevada to one location in  
22 Carson City in order to cast their electoral "ballots" for U.S. president and vice president. They planned  
23 the date, arranged for Right Side Broadcasting's participation, and designed the makeshift outdoor

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24 <sup>6</sup> *See, also People v. Powers*, 117 Cal.App.4<sup>th</sup> 291, 11 Cal.Rptr.3d 619: "As noted in *People v. Parks* (1992) 7 Cal.App.4<sup>th</sup>  
25 883, 887, 9 Cal.Rptr.2d 450, the Legislative purpose of section 115 is to safeguard the integrity of official records. Nothing  
26 in the statute suggests that real property records alone are worthy of protection. Under current jurisprudence, a variety of  
27 legally significant documents have been held to be instruments under section 115, including a temporary restraining order  
28 falsified to expand its requirements and a community work referral form falsified to show completion of a condition of  
probation. (*People v. Parks*, supra, 7 Cal.App.4<sup>th</sup> at p. 885, 9 Cal.Rptr.2d 450; *People v. Tate* (1997) 55 Cal.App.4<sup>th</sup> 663, 667,  
64 Cal.Rptr.2d 206.) While this court once followed *Fraser* in holding that a false affidavit of voter registration was not an  
instrument under section 115, *People v. Fox* (1977) 73 Cal.App.3d 178, 140 Cal.Rptr. 615, more recent authority has  
demonstrated that the limited definition of instrument articulated in *Fraser* is incorrect and should not be perpetuated."

1 meeting room with a table, chairs, and a U.S. flag on what appears to be a 6-foot brass pole with a faux  
2 black marble wall as a backdrop. *See Exhibit 6A – Grand Jury Transcript (GJT) Volume 2, November*  
3 *28, 2023.* Most notable were the multiple certificates they each executed with their signatures—  
4 documents that were specifically designed, drafted and printed for the meeting on December 14, 2020,  
5 to subsequently be securely mailed to various public offices across Nevada and the United States for  
6 filing or recording. These documents are referred to during the meeting as “ballots” or “certificates,” the  
7 design of which and strategy related thereto are discussed in detail through Kenneth Chesebro’s grand  
8 jury testimony. *GJT Volume 2, November 28, 2023, at 32-40.*

9         Petitioners further torture the obvious language and meaning of NRS § 239.330 and suggest that  
10 what controls is not whether the actual, genuine, Certificate of Vote is filed, registered, or recorded, but  
11 rather, whether the false and forged version of their creation could have been filed if it was more  
12 convincing. This is a circular argument. The obvious reading of the statute is the correct one: the  
13 determinative fact is whether the genuine Certificate of Vote is filed, registered, or recorded under state  
14 or federal law. The relevant consideration is not whether the creation of Defendants’ was accepted, but  
15 whether the instrument they impersonated could correctly be filed. *People v. Harrold*, 24 P. 106, 107  
16 (Cal. 1890). The evidence put before the Grand Jurors proved the true Certificate of Vote is such an  
17 instrument.

18         Under the Electoral Count Act, as it was written at the time of the 2020 election, States were  
19 obligated to prepare seven copies of the Certificates of Ascertainment and Vote and forward the copies  
20 to a number of governmental entities. This requirement acts as a failsafe system—it should be noted that  
21 the ECA was enacted in 1887, when mail deliveries were not as reliable as they are today—with  
22 redundancy built into the process so that if the copy bound for the President of the Senate did not arrive,  
23 the Archivist would have a copy that could serve as a backup, and if that copy was lost, then the copy in  
24 the Federal District Court could serve as a backup, and so on. These instruments were required to be filed  
25 by those governmental entities pursuant to law.

26         As was put before the Grand Jury, the Office of the Federal Register receives Certificates of  
27 Ascertainment and Vote from all 50 states and the District of Columbia each election cycle, stores them  
28 in a safe for a period of time (generally more than a year but less than three years), and then forwards

1 those to the National Archives where they become part of the official permanent public federal records  
2 collection. *GJT Vol 1, 12:20 – 14:21*. The fact that The National Archives and the Nevada Secretary of  
3 State rejected Petitioners submission is not indicative either that they are neither false, nor a forgery, nor  
4 that the genuine documents aren't filed, registered or recorded—rather, it is evidence that governmental  
5 systems put in place to ensure the safety and accuracy of our electoral process worked.

6 Moreover, Mr. Wlaschin testified that, at the direction of the Secretary of State, he contacted the  
7 Senate and the Archives to advise them of the transmission of Petitioners false documents, and to clarify  
8 that the ones sent by the Nevada Secretary of State, with the state seal, are the correct documents. *GJT*  
9 *Vol 3 at 92:13-25*. In the absence of his warning, it is entirely possible Petitioners documents would have  
10 been accepted, and a far worse result could have followed.

11 These are exactly the type of records which our government must be able to rely upon, and which  
12 stands to affect the rights or duties of third parties. *State v. Price*, 94 Wash. 2d at 819, 620 P.2d at 999.  
13 The falsehood contained in this document was the material fact that this document has to offer  
14 truthfully—it is the very thing that people refer to this document to learn or verify. The foundation of our  
15 government, indeed our system of government, is threatened by false or forged versions of these  
16 instruments. The language in NRS § 239.330 and NRS § 205.110 (as outlined below), builds in the  
17 possibility that your efforts in offering or uttering false or forged instruments will not be successful, and  
18 in fact, whether the recipient was defrauded does not negate the intent of the Petitioners, or render their  
19 actions anything other than criminal. Thus, Defendants must be held to answer these charges.

20 **2. The State presented sufficient evidence to establish probable cause that**  
21 **the Petitioners committed the crime of Uttering Forged Instruments:**  
22 **Forgery (Count II).**

23 In Count II, the State has charged Petitioners with uttering a forged instrument in violation of  
24 NRS § 205.110. Under NRS § 205.110,

25 Every person who, knowing the same to be forged or altered, and with intent  
26 to defraud, shall utter, offer, dispose of or put off as true, or have in his or  
27 her possession with intent so to utter, offer, dispose of or put off any forged  
28 writing, instrument or other thing, the false making, forging or altering of  
which is punishable as forgery, shall be guilty of forgery the same as if the  
person had forged the same.

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1           Whether a defendant alters a genuine document, combines portions of several genuine documents  
2 to create one which is deceptive, creates a replica document, merely possesses such a document made by  
3 another, or then attempts to pass it off as genuine with the intent to defraud the recipient of that document,  
4 he has committed the crime of uttering. Petitioners’ argument amounts to an assertion that their forged  
5 document is something genuine because they signed their names to it. That does not comport with  
6 common sense or with the law.

7           A document, even one created by the government and being what it purports to be, may be falsely  
8 made if it contains materially false information, if the one tendering it is aware of the false basis upon  
9 which it is created. *Moskal v. U.S.*, 498 U.S. 103, 109, 111 S.Ct. 461, 465-66 (1990). In *Moskal*, the  
10 defendant participated in a car title-washing scheme, in which he and confederates obtained titles in  
11 Pennsylvania, rolled back the odometers on vehicles, and had those vehicles re-titled in Virginia with the  
12 fraudulent mileage indicated. The United States Supreme Court found they were properly convicted of  
13 receiving falsely made securities, finding that the Virginia titles, although genuinely issued by the  
14 appropriate state authorities, were falsely made because they contained the incorrect mileage statements  
15 provided by the defendants.

16           “Short of construing ‘falsely made’ in this way, we are at a loss to give *any* meaning to this phrase  
17 independent of the other terms in [the statute] such as ‘forged’ or ‘counterfeited.’” *Id.*, at 109, 466. “By  
18 seeking to exclude from [the statute]’s scope any security that is ‘genuine’ or valid, *Moskal* essentially  
19 equates ‘falsely made’ with ‘forged’ or counterfeited.’ His construction therefore violates the established  
20 principle that a court should give effect, if possible, to every clause and word of a statute.” *Id.*, quoting  
21 *U.S. v. Menasche*, 348 U.S. 528, 538-39, 75 S.Ct. 513, 519-20 (1955). “This Court has never required  
22 that every permissible application of a statute be expressly referred to in its legislative history.” *Id.*, at  
23 111, at 467. “Although ‘criminal statutes are to be construed strictly . . . this does not mean that every  
24 criminal statute must be given the narrowest possible meaning in complete disregard of the purpose of  
25 the legislature.” *Id.* at 113, at 468, *McIlroy v. U.S.*, 455 U.S. 642, 658, 102 S.Ct. 1332, 1341 (1982)  
26 quoting *U.S. v. Bramblett*, 348 U.S. 503, 509-510, 75 S.Ct. 504, 508 (1955).

27           Here, the Nevada Legislature has offered a definition of what constitutes a forgery, and despite  
28 Petitioners attempts, it must not be limited to one they argue excludes the document they created,

1 executed, and uttered. Petitioners attempt to reduce the definition of forgery to one that would exclude  
2 their document should not be rewarded because Nevada law is clear: forgery includes a counterfeit, a  
3 falsely made document, one with a signature which is falsely made or counterfeit, one which was  
4 previously genuine but has been altered, and so on. *See* NRS § 205.085(2). The suggestion that the  
5 document created and uttered by Petitioners is genuine, is an absurdity. The genuine Certificate of Vote  
6 is the one created by the Nevada Secretary of State. *GJT Vol 3 at 76:11-77:3; GJT Vol 3 at 84:4-21; GJ*  
7 *Exhibit 5*. Petitioners' creation could variously be termed a counterfeit, or a falsely made document, but  
8 by whichever name, it is the kind of thing included by the Legislature in NRS 205.085(2) and is therefore  
9 a forgery. The possession of such a thing, with the intent to pass it, and to thereby defraud the recipient,  
10 is made a Category D felony under NRS § 205.110.

11 The Petitioners cite *Winston*; however, that case is inapposite. The Nevada Supreme Court in that  
12 case reviewed a document which was what it purported to be: a check drafted by that defendant. The  
13 falsity in *Winston* was the promise implied by a check—that the signer is authorized to endorse such a  
14 check, and that it will be honored when presented for payment. In other words, the document endorsed  
15 by Winston was *what it purported to be*: a check he was authorized to sign. It was therefore a genuine  
16 document containing a false statement. Winston therefore did not commit forgery, he likely committed  
17 the crime now proscribed in NRS § 205.130—"Issuance of a check or draft without sufficient money[.]"  
18 Petitioners herein attempt to stretch the *Winston* decision beyond recognition, to a degree where any item  
19 to which one signs their true name could not be called a forgery. By contrast, Defendants herein created  
20 a document which *was not what it purported to be*. *U.S. v. Price*, 655 F.2d 958, 960 (9<sup>th</sup> Cir. 1981). It is  
21 therefore a falsely made document, or by another name, a forgery.

22 Of course, a common fact pattern for a forgery conviction is one in which a Defendant signs a  
23 check that he is not authorized to sign—in other words, the Defendant impersonates the signature of the  
24 individual authorized to sign such a check (or in another common instance, fills in an amount payable  
25 that the authorized signatory did not approve of). But countless other fact patterns also constitute forgery,  
26 whether because a document is 'forged' in the classic sense of having a signature impersonated, or  
27 because the document itself is false or otherwise forged. *See, e.g., Bayot v. Nevada*, 128 Nev. 882 , 381  
28 P.3d 593(2012) (unpublished table decision) (affirming conviction for forgery when Defendant possessed

1 counterfeit currency); *Moskal v. U.S.*, 498 U.S. 103, 111 S.Ct. 461 (1990) (affirming conviction for  
2 transporting ‘falsely made’ securities under 18 U.S.C. § 2314—the falsely made securities were genuine  
3 vehicle titles issued by the correct Virginia authority but which contained false odometer readings  
4 provided by Defendant and his co-conspirator); *U.S. v. Price*, 655 F.2d 958 (9th Cir. 1981) (affirming  
5 conviction for transporting forged checks, when Defendant signed his name to the check of a fictitious  
6 person with the same name as Defendant); *U.S. v. Serpico*, 148 F.2d 95 (2<sup>nd</sup> Cir. 1945) and *Carney v.*  
7 *U.S.*, 163 F.2d 784 (9th Cir. 1947) (In each of which Defendants counterfeited gasoline ration coupons,  
8 in violation of 18 U.S.C. §494 (“Whoever falsely makes, alters, forges, or counterfeits . . . or other writing  
9 for the purpose of defrauding the United States;”)).

10 The State presented ample evidence of all these facts to the Grand Jury, the Grand Jury correctly  
11 returned a true bill as to the charge of Uttering a Forged Instrument. Petitioners must now be held to stand  
12 trial on that charge.

13 b. Intent is a question of fact for the trier of fact to decide.

14 Petitioners next argue that the State failed to present evidence of their intent to defraud. The grand  
15 jurors were instructed that “where one in possession of a forged instrument seeks to pass it, it is  
16 permissible to infer, for the purpose of establishing probable cause, that he or she acted with the  
17 fraudulent intent necessary to support a charge of forgery.” *Patin v. Sheriff*, 92 Nev. 673, 675 (1976). *See*  
18 *GJ Exhibit 2A*. The state presented sufficient evidence that the Petitioners were in possession of a forged  
19 instrument, i.e. the “CERTIFICATE OF THE VOTES OF THE 2020 ELECTORS FROM NEVADA,”  
20 wherein they falsely claimed they were the “duly elected and qualified Electors for the State of Nevada”  
21 and uttered the same to the governmental entities. For purposes of determining probable cause, the grand  
22 jury could infer that the Petitioners had the fraudulent intent necessary to support the charge of NRS §  
23 205.110. Additionally, the issue of intent is a question of fact for the trier of fact to decide.

24 The intent of the Petitioners is clear in the Right Side Broadcasting video. *See GJ Exhibit 6A*  
25 Throughout the video, the Petitioners refer to themselves as the electoral voters, not Republican electoral  
26 voter nominees. The Petitioners neither refer to themselves as “alternate” electors, nor in any way imply  
27 the proceedings are merely symbolic or isolated to a demonstration of free speech. Rather, the event is  
28 serious and incorporates elements typically associated with a formal meeting, such as an agenda, call to

1 order, invocation, pledge of allegiance, singing of the U.S. National Anthem, roll call, taking of oaths,  
2 election of officers, distribution of member packets, conducting votes, signing documents before  
3 witnesses and adjournment. Additionally, there were no disclaimers on the forged certificates to indicate  
4 the Petitioners were executing the documents as a form of protest, symbolically, or in case of future  
5 lawsuits. Instead, it was evident the Petitioners signed and offered the forged certificates because they  
6 wanted to be the “duly elected and qualified Electors for President and Vice President of the United States  
7 of America from the State of Nevada.”

8 The Petitioners further argue that they did not have the requisite intent because the New Mexico  
9 Attorney General found no crime had occurred in their state related to the same conduct. This is entirely  
10 a red herring. The conduct that occurred by individuals in other states does not transfer “non intent” to  
11 the Petitioners. The court should give this argument no consideration.

12 **C. The State presented sufficient exculpatory evidence and did not present false or**  
13 **misleading testimony.**

14 **1. Proper and non-duplicative exculpatory evidence was presented.**

15 The Petitioners allege that “counsel for the defendants provided a letter dated December 1, 2023,  
16 which outlined exculpatory evidence and information that the defense requested and the Attorney General  
17 was statutorily required to present to the Grand Jury.” *See Joint Memorandum of Points and Authorities*  
18 *In Support Of Defendants’ Petitions for Writ of Habeas Corpus, page 21, lines 23-26.* The Petitioners  
19 further allege “this information was not presented to the grand jury.” *Id at 22, line 7.* This statement is  
20 factually inaccurate.

21 NRS 172.135(2) provides, in pertinent part: “Except as otherwise provided in this subsection, the  
22 grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of  
23 hearsay or secondary evidence.” Exculpatory evidence is defined as evidence that will explain away the  
24 charge, and the prosecutor is required to disclose all such evidence to the grand jury. *King v. State*, 116  
25 Nev. 349, 359, 998 P.2d 1172, 1178 (2000). NRS 172.145(2) provides: “If the district attorney is aware  
26 of any evidence which will explain away the charge, the district attorney shall submit it to the grand  
27 jury.” “By its terms, NRS 172.145(2) requires that the district attorney be “aware” of evidence “which  
28 will explain away the charge” before the duty to submit the evidence of the grand jury arises.” *Mayo.*

1 *Eighth Judicial District Court of the State in and for County of Clark*, 132 Nev. Adv. Op 79, 384 P.3d  
2 486, 489 (2016). “To be “aware” of something is to “hav[e] knowledge or cognizance” of it.” *Id.* “The  
3 district attorney or his or her deputy must appreciate the exculpatory value of the evidence to-be “aware”  
4 of it for purposes of NRS 172.145(2).” *Id.*

5 NRS 172.155(1) explains that a “grand jury ought to find an indictment when all the evidence  
6 before [it], taken together, establishes probable cause to believe that an offense has been committed and  
7 that the defendant has committed it.” *Schuster v. Eighth Judicial Dist. Court ex rel. County of Clark*, 123  
8 Nev. 187, 192, 160 P.3d 873 (2007). *Citing Sheriff v. Dhadda*, 115 Nev. 175, 180, 980 P.2d 1062, 1065  
9 (1999). “The finding of probable cause “does not involve a determination of the guilt or innocence of an  
10 accused,” and this court has consistently held that to secure an indictment, the State is not required to  
11 negate all inferences which might explain away an accused's conduct.” *Id.* See Also; *Sheriff v. Hodes*, 96  
12 Nev. 184, 186, 606 P.2d 178, 180 (1980) (citations omitted). *E.g.*, *Sheriff v. Shade*, 109 Nev. 826, 828–  
13 29, 858 P.2d 840, 842 (1993); *Sheriff v. Miley*, 99 Nev. 377, 379, 663 P.2d 343, 344 (1983); *Kinsey v.*  
14 *Sheriff*, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971).

15 In *Schuster*, the court held “although Nevada law requires the State to present exculpatory  
16 evidence to a grand jury, requiring the State to also instruct a grand jury on the legal significance of  
17 exculpatory evidence simply does not comport with the traditional investigative, accusatory role of a  
18 grand jury.” *Schuster*, 123 Nev. at 193-194. It further stated, “the full presentation and credibility of an  
19 accused's defense are matters reserved for the adversarial process of trial.” *Id.*

20 To the extent that Petitioners are alleging the State was required to provide the grand jurors with  
21 the Letter attached as *Exhibit A* to their Petition, the Letter is not legal evidence, and it would have been  
22 improper for the State to present. If they are alleging the State did not present the evidence that was  
23 attached to their Letter, this is also incorrect.

24 First, the Petitioners asked that the State provide the grand jury with an instruction regarding  
25 intent, which the State did so and can be found in *GJ Exhibit 2A*. Secondly, the Petitioners asked the State  
26 to provide the grand jury with three (3) e-mail exchanges that they allege justified their actions. Although  
27  
28

1 the State did not agree that the evidence was exculpatory, out of an abundance of caution, the State  
2 provided those e-mails as *GJ Exhibits 30, 31 and 34*.<sup>7</sup>

3 The Petitioners also requested the State provide the grand jury with the entire pleading file for the  
4 election contest litigation.<sup>8</sup> Pleadings from a court proceeding are generally not legal evidence because  
5 they contain arguments from counsel; however, certified court Orders can be offered as evidence. The  
6 State provided the grand jury a copy of the Order of Affirmance which included as attached the Order  
7 Granting Motion to Dismiss Statement of Contest and Order of Affirmance as *Exhibit 22*. To the extent  
8 that the Petitioners were seeking admission of the court proceedings to provide the grand jurors with their  
9 claims of election/voter fraud, those concerns were addressed in the Orders provided in *GJ Exhibit 22*,  
10 the e-mails provided by Petitioners in *Exhibits 31 and 34*, and the numerous statements made by  
11 McDonald and Law, and Republican Alternate Elector Nominee, James Marchant, in the Right Side  
12 Broadcasting video.

13 Additionally, Mr. Marchant discussed the justification for submitting their votes based on the  
14 1960 Presidential Election during that video, which the Grand Jurors reviewed.<sup>9</sup> All alleged exculpatory  
15 evidence not provided was presented in other forms to the grand jury.

16 It should be noted that Petitioners view or opinion of the evidence is not relevant to the conduct  
17 in this case because at the time the Petitioners declared themselves the duly qualified electors for the  
18 State of Nevada, the Nevada Supreme Court had ruled against them, and the election contest was over.  
19 That statement was false at the time they made it, regardless of their claims that litigation was ongoing.

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20  
21 <sup>7</sup> The Petitioners did not provide a proper Custodian of Records Affidavit for the e-mails, or any of the documentation  
22 provided in their December 1, 2020, Letter, instead attempting to use an unsworn Declaration of Attorney Brian R. Hardy,  
23 Esq. as the source of authentication for e-mails he did not author, nor was not a percipient witness to. As a result, the State  
24 located the same e-mails provided by Petitioners in their Google, LLC production and used those e-mail chains as the exhibits  
25 because they were supported by a proper NRS 53.045 COR Declaration (*See GJ Exhibit 23*).

26 *Petitioners also provided a News Article that allegedly contained a quote from Petitioner Meehan; however, proper  
27 authentication was not provided for this article and therefore was not admissible. Additionally, the statements made by  
28 Petitioner Meehan were echoed by others in the Right Side Broadcasting video.*

<sup>8</sup> Several of the pleadings provided were duplicative.

<sup>9</sup> Mr. Marchant stated to the reporter on the Right-Side Broadcasting video that “We believe Donald Trump won Nevada  
and we are going to be prepared just in case once this works its way through the courts or whatever remedies President Trump  
comes up with and his team. And we’re going to have our electors present on January 6<sup>th</sup>, I believe, for Vice President Pence.”  
*See GJ Exhibit 6A, beginning at 3.50 minutes.* Marchant further likens this effort of putting forth Certificates for Donald J  
Trump and Mike Pence to the 1960 election of John F. Kennedy. *Id*

1 Lastly, to the extent that there was exculpatory evidence not presented, that alone is not dispositive  
2 because the State is not required to provide cumulative evidence.

3 **2. The evidence presented was not false or misleading.**

4 Petitioners allege that the State presented false or misleading testimony. However, even if the  
5 Court finds that some of the statements made were inadmissible evidence, Nevada has found that “a  
6 grand jury indictment will be sustained where the state submits sufficient legal evidence to establish  
7 probable cause, even though inadmissible evidence may have been offered.” *Detloff v. State*, 120 Nev.  
8 588, 590, 97 P.3d 586 (2004). In the *Detloff* case, the prosecutor admitted into evidence family  
9 photographs of the victims, funeral program, false testimony, and statements concerning the retention of  
10 counsel in lieu of contacting police. *Id.* Despite these admissions, the court rejected Dettloff’s argument  
11 that the court erred in denying his Petition. The Court relied on the idea that the “district court may grant  
12 a pretrial petition for writ of habeas corpus where the prosecution acted in “a willful or consciously  
13 indifferent manner with regard to a defendant’s procedural rights, or where the grand jury indicted the  
14 defendant on criminal charges without probable cause,” and neither reason applied in Dettloff’s case. *Id.*

15 This court has held that “it is not mandatory for the prosecuting attorney to instruct the grand jury  
16 on the law.” *Schuster*, 123 Nev. at 187, 192. See also *Phillips v. Sheriff*, 93 Nev. 309, 312, 565 P. 2d  
17 330, 332 (1977) (the cases impose no requirement upon the prosecuting attorney to offer gratuitous  
18 explanations of every legal matter that may or may not become relevant to the further prosecution of the  
19 case).

20 As to Mr. Chesebro’s testimony, it seems more than likely that his answer was not false testimony  
21 when he stated he’d had no response to his inquiry as to further litigation – rather, he simply omitted the  
22 word “meaningful.”

23 Further, and as Petitioners acknowledge, *Petition at 40:8-15*, the State provided Mr. Chesebro’s  
24 testimony, and the e-mails which appear to conflict with his testimony to the grand jurors, who having  
25 considered it all, returned a true bill.

26 ///

27 ///

28 ///



1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that  
3 on February 8, 2024, I filed the **RETURN AND RESPONSE TO PETITION FOR WRIT OF**  
4 **HABEAS CORPUS (PRE-TRIAL)** via this Court’s electronic filing system. The following parties are  
5 registered with this Court’s EFS and will be served electronically.

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25 By: /s/ R. Holm  
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28