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**ESMERALDA COUNTY JUSTICE COURT
GOLDFIELD, STATE OF NEVADA**

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)	Citation #
STATE OF NEVADA; AND IN THE)	
ALTERNATIVE RAY LAHOOD,)	DEFENDANT’S MOTION TO
SECRETARY OF TRANSPORTATION	)	DISMISS FOR LACK
THE UNITED STATES; SUSAN KLEKAR,	)	FOUNDATION PERSUANT TO
CHIEF OF THE NEVADA DIVISION	)	NEVADA NRS 484.369 AND
FEDERAL HIGHWAY	)	NRS 484.781 [sic THE
ADMINISTRATION,	)	HIGHWAY SAFETY ACT OF
Plaintiffs,	)	1966 (PUBLIC LAW P.L. 89-
	)	564, 80 Stat. 731)]; IN THE
v.	)	ALTERNATIVE A NOTICE OF
	)	INTENT TO REMOVE; AND
RICHARD GLEN COLTER,	)	WRIT OF MANDAMUS TO
Defendant; and in the Alternative Private	)	FEDERAL DISTRICT COURT
Attorney General, Ex Relazione, United	)	PER 5 USC § 706 (1)(2)(a; b; c;
States of America	)	d; e; f), 49 USC § 30103, 28 USC
	)	§ 1331/1443, and 18 USC § 241,
	)	242 ET AL

1 **MOTION TO DISMISS FOR LACK OF FOUNDATION; AND IN THE**
2 **ALTERNATIVE WRIT OF MANDAMUS TO THE UNITED STATES 9TH CIRCUIT –**
3 **DISTRICT OF NEVADA**

4 TO THE HONORABLE JUDGE OF SAID COURT:

5 Defendant files this Motion to Dismiss pursuant to the U.S. Constitution, Article 1§8 (1)
6 national defense and general welfare, (3) commerce, (7) post roads (transportation regulation),
7 and (18) necessary and proper clause; under the Constitutional powers delegated to Congress
8 for the General Welfare of the Nation, for Powers not enumerated to States in the 10th
9 Amendment: Such powers delegated to Congress under Commerce Clause authority in The
10 Highway Safety Act of 1966 (P.L. 89-564, 80 Stat. 731) that over time displaced Nevada’s
11 legacy powers in this *entire field* (sic traffic control, vehicle code and laws) with State police
12 powers that *under the color of federal law* shall be in substantial conformance within the
13 bounds of the US Constitution and Congress’ intent et al; including the US Constitution i.e.
14 Substantive and Procedural Due Process, Equal Protection, Supremacy, Commerce,
15 Confrontation Clause(s), Void for Vagueness, Habeas Corpus, 1st, 4th, 5th, 6th, 9th and 14th
16 Amendments; Judicial Notice and Rules of Evidence in NRS 48.015, NRS 47.130, NRS
17 47.140 and NRS 484.781 et al as follows;

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FEDERAL:

US Constitution Article 1 Section 8 (1)(3)(7)(18)
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Manual on Uniform Traffic Control Devices (MUTCD), 23 U.S.C. 109(d) and 402(a)
US 23 CFR 655.603(b)(d).
23 U.S.C. 655.655, Subpart F (1995)
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5 USC 706
18 USC 241 & 242
28 USC 1331
28 USC 1443
49 USC 30103
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United States v. Trimble, 487 F.3d 752, Ninth Circuit (2007)
Whren et al. v. United States, 517 U.S. 806 (1996).
Marbury v Madison, 5 US (2 Cranch) 137, 174, 176; 2 LE 60 (1803)

1 Miranda v Arizona, 384 US 436, 491; 86 S Ct 1602; 16 L Ed 2d 694 (1966)

2 Norton v Shelby County, Tennessee, 118 US 425, 442; 6 S Ct 1121; 30 L Ed 178 (1886).

3 **NEVADA:**

4 NRS 484.781

5 SB 133 Legislative Record (1995)

6 NRS 484.369 (1995)

7 NRS 484.361

8 NRS 484.362 (1995)

9 NRS 484.373

10 NRS 408.131 (1995)

11 NRS 48.015

12 NRS 47.130

13 NRS 47.140

14 NDOT Annual Speed Report (2000)

15 **REFERENCE:**

16 BHPSI: Letter to Legislative Council et al; 2009

17 BHPSI: Montana Paradox (2001)

18 BHPSI: ITE 6, Speed Limits and the Law (2009)

19 KSU: Study of Speed Limits (2010)

20 National Atlas (Transportation): Jurisdictional and Roadway data

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I.

NO PROBABLE CAUSE

Defendant was arrested absent probable cause to arrest. This case turns on Matters of Law because the Defendant’s arrest was the fruit of illegal Nevada Revised Statute Clause(s) and federal R2-1 (Speed Limit Sign) traffic control device use, and repealed, conflicting or displaced state police powers therein enacted under the color of federal law in violation of the United States Constitution, Substantive and Procedural Due Process, Equal Protection, Supremacy, Commerce, Confrontation Clause(s), Void for Vagueness doctrine, Habeas Corpus, 1st, 4th, 5th, 6th, 9th and 14th Amendments, and NRS 484.781 et al; and on Matters of Fact documented herein including the self evident fruit of illegal acts under the color of federal law by state personnel acting in their professional capacity to deny the Rights of the Defendant et al, a federal crime. Therefore, results of the arrest should be dismissed and all state’s evidence suppressed.

II.

GROUND HIERARCHY

1. Powers of Congress - US Constitution Article 1 Section 8 (1) national defense and general welfare; (3) commerce; (7) ... post roads. (*transportation regulation*); (18) ... *necessary and proper* ... ; powers not enumerated to the States in the 10th Amendment;
2. Congress encompassed this entire field in The Highway Safety Act of 1966 (P.L. 89-564, 80 Stat. 731) (1966) by invoking its Article 1 Commerce Clause powers et al to “regulate the use of the channels of interstate commerce” and “to regulate and protect the instrumentalities of interstate commerce,” as articulated in *United States v. Lopez*, 514 U.S. 549, 558 (1995).

The Highway Safety Act of 1966 incorporated into federal law the progeny of the 1926 Uniform Vehicle Code (UVC), which in part required motorists to drive at speeds “reasonable and prudent” (Basic Speed Law UVC § 11-801); and, the 1927 “American Association of State

1 Highway Officials” publication of the “Manual and Specifications for the Manufacture,
2 Display, and Erection of U.S. Standard Road Markers and Signs (for rural roads)” which
3 evolved into the Manual on Uniform Traffic Control Devices (MUTCD), 23 U.S.C. 109(d) and
4 402(a) et al.

5 Congress delegated the Act’s oversight to the Commerce Department, and later
6 transferred oversight to its newly created cabinet level Secretary of Transportation, within the
7 U.S. Department of Transportation (USDOT) (former U.S. Bureau of Public Roads); powers
8 governed in part by 5 U.S.C. § 706 to achieve Congress’ “roadway safety” mandates via fact-
9 based uniform laws, practices, devices, expectations and the exercise of police powers thereof.

10 Under the color of federal law, all acts by a federal agency or the exercise of police
11 powers by an inferior authority shall be in substantial conformance with the following precepts
12 and the U.S. Constitution et al;

13 **5 U.S.C. § 706. Scope of review**

14 To the extent necessary to decision and when presented, the
15 reviewing court shall decide all relevant questions of law, interpret
16 constitutional and statutory provisions, and determine the meaning
17 or applicability of the terms of an agency action. The reviewing
18 court shall:

19 (1) compel agency action unlawfully withheld or unreasonably
20 delayed; and

21 (2) hold unlawful and set aside agency action, findings, and
22 conclusions found to be:

23 (A) arbitrary, capricious, an abuse of discretion, or otherwise not
24 in accordance with law;

25 (B) contrary to constitutional right, power, privilege, or
26 immunity;

27 (C) in excess of statutory jurisdiction, authority, or limitations, or
28 short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to
sections 556 and 557 of this title or otherwise reviewed on the
record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are
subject to trial de novo by the reviewing court.

1 In making the foregoing determinations, the court shall review the
2 whole record or those parts of it cited by a party, and due account
3 shall be taken of the rule of prejudicial error.

4 3. Nevada adopts NRS 484.781 (1969) recognizing the supremacy of these federal
5 conditions precedent and their progeny in perpetuity.

6 **NRS 484.781 Adoption of manual and specifications for devices
7 for control of traffic by department of transportation.**

8 1. The department of transportation shall adopt a manual and
9 specifications for a uniform system of traffic-control devices
10 consistent with the provisions of this chapter for use upon
11 highways within this state. The uniform system must correlate with
12 and so far as possible conform to the system then current and
13 approved by the American Association of State Highway Officials
14 and the National Joint Committee on Uniform Traffic Control
15 Devices.

16 2. All devices used by local authorities or by the department of
17 transportation shall conform with the manual and specifications
18 adopted by the department.

19 (Added to NRS by 1969, 1488; A 1979, 1814)

20 5. In exchange for federal highway funds under US 23 CFR 630.112(a), Nevada certifies
21 compliance with these governing laws on all facilities open to public travel therein, regardless
22 of jurisdiction, type, or classification; and accepts the benefit of federal funds, thus barring a
23 state' rights claims. *Pennhurst v. Halderman*, 451 U.S. 1, 17 (1981); *Federal Power
24 Commission v. Colorado Interstate Gas*, 348 U.S. 492 (1955)

25 6. US Ninth Circuit in *NEVADA v. SKINNER* 884 F.2d 445(1989) upholds federal
26 supremacy in this entire field when Nevada challenged Congress' Commerce Clause authority
27 over Nevada's traffic laws vis-à-vis its use of Speed Limit Signs (R2-1 federal regulatory
28 device).

*"Nevada has pegged its attack on the national speed limit on the
wobbly legs of the coercion test. While we strongly doubt the
vitality of that theory, we conclude that, alive or dead, it is of no
consequence here. Congress could have mandated a national
speed limit under its Commerce power: that it chose to enact a*

1 *lesser restraint, by cutting off highway funds to states unwilling to*
2 *adopt the designated limit, does not render its actions*
3 *unconstitutional.”*

4 The National Maximum Speed Limit (NMSL) was subsequently repealed, but the
5 domain of Federal Supremacy in this Field and the Constitutional Rights of the Defendant were
6 not;¹

7 7. The US Supreme Court unambiguously defined the scope of “The Supremacy Clause”
8 when Congress occupies an entire field. FIDELITY FEDERAL SAV. & LOAN ASSN. V. DE
9 LA CUESTA, 458 U.S. 141 (1982)

10 *"Pre-emption may be either [458 U.S. 141, 153] express or*
11 *implied, and is compelled whether Congress' command is explicitly*
12 *stated in the statute's language or implicitly contained in its*
13 *structure and purpose." ... "A pre-emptive regulation's force does*
14 *not depend on express congressional authorization to displace*
15 *state law”*

16 8. 1995, Nevada Senate Bill 133²(SB 133) context was ostensibly to amend NRS 484.361,
17 484.362 and 484.373 et al to decriminalize otherwise safe driving and improve traffic flow
18 within the scope of the NMSL; sponsored by Senator Washington.

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20 ¹ In *skinner vs Nevada*, Nevada challenged the NMSL established by congress, arguing that
21 congress' arbitrary invented statutory speed limit infringed on states' rights. As if plagued
22 by ignorance, Nevada is now arguing IN SUPPORT OF their right to post arbitrary invented
23 statutory speed limits, STUBBORNLY IGNORING THAT THE 9TH CIRCUIT HAS ALREADY
24 RULED AGAINST A STATE' RIGHT TO POST ARBITRARY SPEED LIMITS. Whereas, the
25 record clearly shows that this court exercised its jurisdiction, citing the supremacy and
26 interstate commerce clauses, and ruled against Nevada's tenth amendment arguments. But
27 here again Nevada wishes to trot out its usual horses, and make the same arguments;
28 except this time they wish to argue against other federal authorities, such as the US
 constitution, federal safety regulations, the uniform vehicle code, and the incumbent field
 of science governing the publics at large safety interest in properly engineered speed
 limits: While they wish to ignore Nevada's legacy of having no speed limits on its highways
 and interstates absent a demonstrable safety hazard and when the hazard ceased to exist to
 remove said limits NRS § 484.369 (emphasis).

² <http://www.leg.state.nv.us/68th/95bills/SB133.TXT>

1 SB 133 intent as amended in Committee, if Congress repealed the NMSL, Nevada was
2 to return to NRS 484.361(1)(2), which mirrored federal law (Basic Speed Rule, UVC § 11-
3 801); Nevada’s law prior to Congress’ energy emergency in 1974 and its NMSL.

4 **Basic Speed Rule:** No person shall drive a vehicle greater than
5 is reasonable and prudent under the
6 conditions and having regard to the actual
7 and potential hazards then existing. UVC §
8 11-801

9 **NRS 484.361 Basic rule.** It is unlawful for any person to drive or
10 operate a vehicle of any kind or character at:

11 1. A rate of speed greater than is reasonable or proper, having due
12 regard for the traffic, surface and width of the highway, the
13 weather and other highway conditions.

14 2. Such a rate of speed as to endanger the life, limb or property of
15 any person.

16 9. The extant federal speed limit sign conditional use authority in 1995 was governed by
17 1988 MUTCD 2b-10, which had an “after” precondition that required a factual foundation for
18 the number posted; and there were no exceptions: It did not say what to post, only that if a
19 speed limit is found to be warranted, it’s to be based on a conforming engineering study, which
20 shall be documented, as adopted in 23 U.S.C. 655.655, Subpart F; the end result being that
21 Nevada’s NRS § 484.369(1) was in substantial conformance with the 1988 MUTCD 2b-10:

22 **1988 MUTCD: 2b-10, R2-1; Speed Limit Sign**

23 The Speed Limit sign shall display the limit established by law, or
24 by regulation, after an engineering and traffic investigation has
25 been made in accordance with established traffic engineering
26 practices.

27 **NRS 484.369 Speed zones and signs. (1995)**

28 1. The Department of Transportation may prescribe speed zones,
and install appropriate speed signs controlling vehicular traffic on
the state highway system as established in chapter 408 of NRS
through hazardous areas, after necessary studies have been made to
determine the need therefor, and to eliminate speed zones and
remove the signs therefrom whenever the need therefor ceases to
exist.

1 10. NRS § 484.361(3) “*speed greater than that posted*”, NRS § 484.361(4) “*In any event, a*
2 *rate of speed greater than 75 miles per hour*” invented numeric/absolute prohibitive clause,
3 and the federal UVC § 11-802³⁴ “statutory” as promulgated, were proscribed arbitrary and
4 capricious safety and probable cause thresholds on their face, whose authority was de facto
5 repealed or displaced per the MUTCD⁵ et al 2 years hence in 1990⁶ and 1997⁷ respectfully by
6 Congress and the U.S. Constitutions’ protections from arbitrary and capricious police powers
7 or standards.

8 **NRS 484.361 Basic rule.** It is unlawful for any person to drive or
9 operate a vehicle of any kind or character at:

10 3. A rate of speed greater than that posted by a public authority for
11 the particular portion of highway being traversed.

12 4. In any event, a rate of speed greater than 75 miles per hour.

13 (Added to NRS by 1969, 1486; A 1975, 754; 1987, 656; 1995,
14 2441, 2442)

15 The safety value posted on a federal device must be fact based, and the enforcement
16 probable-cause threshold must be narrowly tailored to achieve a legitimate government
17 objective; probable cause founded in invented numbers or enforcement thresholds (sic absolute
18 limits) are not legitimate justification for search and seizure under the 4th Amendment. The
19 safety value posted and enforced is governed by a scientific field per nationally recognized
20 engineering practices, which were adopted by reference in MUTCD: Section 1A.13 et al, and
21 provides due process and remedy by confrontation to any defendant charged in a particular
22 instance.

23 11. Because Nevada failed to conduct a complying study to determine that speed limits are
24 warranted, especially on this particular segment of roadway, there is no legal foundation for the
25 charge at bar. Consider that since 1966, the USDOT hasn’t conducted a single vetted root

26 3 UVC §11-802 Statutory Speed Limits
27 4 <http://www.nhtsa.dot.gov/people/injury/enforce/speedlaws501/uvcspeep.pdf>
28 5 23 U.S.C. 655.603(b) (d)
6 1988 MUTCD (effective 1990)
7 1995 Repeal NMSL (effective 1997)

1 cause accident analysis on these classifications of roadways to make such a determination for,
2 or as a foundation for such a standard. Nor is there any vetted evidence WHATSOEVER that
3 rural highways with posted limits are safer than those without them⁸⁹; whereas those without
4 speed limits have been consistently documented⁸ to be among the safest.

5 12. Moreover, when a posted limit is set to the recommended¹⁰85th percentile speed, the
6 85th percentile speed is the merely the safest speed (lowest risk) on the relative risk curve, thus
7 speeds up to 100 percent of the measured traffic speeds are by definition safe. It follows that a
8 violation of the number on the sign does not in itself constitute an unsafe act.

9 Per exculpatory NDOT annual reports: The 24-hour public's consensus safest speeds
10 (85th percentile) on segments US 395 have been reported by NDOT to be up to 89.6
11 (Coaldale), and 87.4 (Goldfield) on page 6 of their own annual report¹¹. Therefore, separately
12 from all other arguments, the 70 mph signs the Defendant has been charged with violating lack
13 legal foundation because NDOT has constructive knowledge they are unfounded; nor is there a
14 federal or Nevada study that has found them to be warranted on this classification of roadway.

15 Even if the limit had been based on a complying study, and if a prima facie standard had
16 been written into the language of NRS § 484.361(3) et al, the instant case would still lack
17 foundation because: The probable cause to initiate an arrest would still turn on either an
18 invented numeric threshold, or a numeric below the maximum safe speed, neither of which
19 constitute probable cause (probable cause was defined by the US Supreme Court in the case of
20 **Whren vs United States** as "evidence that a crime has been committed", which in the context
21 of driving means an unsafe act).

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8 ITE District 6 - Speed Limits - pg 18, WSDOT; pg 27, Montana: Summary of the effects of no
daytime speed limits http://www.bhspi.org/BPpapers/files/BHSPI_ITE6_Denver090715f.pdf

26 9 Kansas State University Study <http://www.sciencedaily.com/releases/2009/04/090410123455.htm>

27 10 ITE District 6 - Speed Limits - When and why the 85th percentile -pg 16, Federal Highway
Administration FHWA/RD-85/096 Technical Summary, "Synthesis of Speed Zoning Practice"
28 http://www.bhspi.org/BPpapers/files/BHSPI_ITE6_Denver090715f.pdf

11 http://www.nevadadot.com/reports_pubs/traffic_report/2000/pdfs/Speed2000.pdf

1 13. The legislative record shows SB 133 was passed by the Senate, and then by the House
2 transportation committee, and they sent it to the Assembly with a do pass; per parliamentary
3 rules the bill was read two times on Assembly floor late in session, which was to end in 3 days.

4 14. National press announces the passage by Congress of a bill that will repeal its invented
5 value National Maximum Speed Limit (NMSL) NRS 484.362; and the not to exceed fuel
6 saving enforcement threshold clause as expressed in 484.361(3) ... "speed greater than".
7 Hence, the National Highway System Designation Act of 1995 (Pub.L. 104-59, 109 Stat.568)
8 was signed into law by President Bill Clinton on November 28, 1995.

9 Thereby, Congress returned the setting of speed limits to the states, per the conditions
10 precedent of extant law: The US Constitution, Congress' intent, US 23, the 1988 MUTCD,
11 UVC, etc, with no exceptions; thus the conflicting clause(s) in the UVC were also de facto
12 repealed (UVC § 11-802 et al), including capricious invented statutory limits, presumptive, per
13 se, or probable cause thresholds, and disparate adjudication standards.

14 15. Per Nevada Law, parliamentary rules may be suspended during the last few days of a
15 session, but the Supremacy Clause and US Constitution as related to the exercise of police
16 powers by Nevada under the color of federal law cannot be suspended.

17 16. When the parliamentary rules were suspended, and at the behest of the NHP legislative
18 liaison (Major Daniel Hammack), a few legislators rewrote SB 133¹²; and inserted their own
19 version of the now repealed by Congress State Police Powers authority for capricious invented
20 numeric speed limits in NRS 484.361(4)(75mph et al). And they failed to bring the displaced
21 wording of NRS 484.361(3) into conformance with the then compliant federal recommended
22 practice *prima facie* exception; where motorists could be found not guilty irrespective of the
23 number posted if they establish they were driving safe for conditions.

24 Uniform: Under federal law, an R2-1 safety device must meet the legal test of a
25 uniformly standardized meaning and expectation to motorists, and this can only be
26 accomplished with *prima facie* speed limits. And *prima facie* speed limits were the only speed
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¹² http://www.leg.state.nv.us/68th/95bills/SB133_EN.TXT

1 limits that met these mandated standards in 1995; as also articulated in California and Arizona
2 law etc.

3 17. These last minute changes in SB 133 were done absent a single hearing: 1) Or legal
4 review as to the consequences of Congress' repeal; 2) Extant controlling federal laws in this
5 field; 3) The affects of SB 133 on other NRS statutes; 4) Or, the fact that invented numerics
6 and enforcement threshold police powers in the NRS were going to be repealed or displaced by
7 the coming changes in the controlling federal law;

8 18. The Nevada Legislature sent an unvetted, defective, and conflicting unconstitutional Bill
9 to the Governor for his signature; that on its face was, and remains, in direct conflict with
10 extant state and federal law. When the Governor signed it into law, NRS 484.361(3)(4) et al
11 conflicted with NRS 484.781, which adopted federal supremacy for traffic control in 1969 and
12 the HSA of 1966; thus, per the Supremacy Clause, the conflicting NRS clauses et al were void
13 under the color of controlling federal law;

14 19. Subsequently, it can be verified per NDOT and public records in 1995 for all instances
15 of US 395, that Tom Stephens as Director of the Nevada Department of Transportation
16 (NDOT), headed the State Speed Limit Task Force (SLTF); and in one such meeting of the
17 SLTF in Carson City, Tom Stephens decreed all statewide speed limits using colored felt
18 markers on a map, using only his personal opinion for each: Absent a single supporting
19 engineering study, as required by extant federal law (1988 MUTCD 2b-10 R2-1: Speed Limit
20 Sign) or Nevada's conforming subordinate NRS § 484.369(1). (Exhibit 1: Attached order¹³ that
21 lacked a single prescribed by state and federal law supporting study; comprehensive for each
22 segment, and shall be documented)

23 An internet search turned up many instances where others have strongly objected to this
24 illegal conduct within Nevada by State Officials and its Courts where this noncompliance has
25 been raised with the NDOT Director, Deputy Director, State Traffic Engineer et al, Governors'

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¹³ <http://bhspi.org/documents/NDOT1995speedreport.pdf>

1 Office, the Legislature, their Council and AG; and in many instances since, including the 2009
2 Legislature¹⁴ et al.

3 20. Nevada’s highway and interstate speed limits, including the 70 mph speed limit of the
4 instant case that Defendant purportedly violated, has remained illegally posted and enforced 15
5 years after the fact under both federal and state law: And all of this despite NDOT’s
6 constructive knowledge¹⁵ they were not based on a finding of fact per our governing laws, or
7 an unsafe act under any standard or law. Not only is the citation the fruit of an illegal act under
8 the color of federal law: It now constitutes a federal crime per 18 U.S.C. § 241 & 242;
9 conspiring to deny the Constitutional rights of an individual, thus making the federal issues
10 ripe.

11 **18 U.S.C. § 242:** The United States Department of Justice,
12 Criminal Rights Division, on their web page
13 [<http://www.usdoj.gov/crt/crim/242fin.php>] describes,
14 “DEPRIVATION OF RIGHTS UNDER COLOR OF LAW” as
follows: “Summary:

15 *“Section 242 of Title 18 makes it a crime for a person acting under*
16 *color of any law to willfully deprive a person of a right or privilege*
protected by the Constitution or laws of the United States.

17 *“For the purpose of Section 242, acts under “color of law”*
18 *include acts not only done by federal, state, or local officials*
19 *within their lawful authority, but also acts done beyond the*
20 *bounds of that official's lawful authority, if the acts are done while*
the official is purporting to or pretending to act in the performance
of his/her official duties. . . .”

21 **18 U.S.C. § 241:** The United States Department of Justice,
22 Criminal Rights Division, on their web page
23 [<http://www.usdoj.gov/crt/crim/241fin.php>] describes
“CONSPIRACY AGAINST RIGHTS” as follows:

24 -51- *“Summary: “Section 241 of Title 18 is the civil rights*
25 *conspiracy statute. Section 241 makes it unlawful for two or more*
26 *persons to agree together to injure, threaten, or intimidate a*
person in any state, territory or district in the free exercise or
enjoyment of any right or privilege secured to him/her by the

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¹⁴ http://www.bhspi.org/documents/BHSPI_NEVLeg_0905_fedlawf.pdf

¹⁵ http://www.nevadadot.com/reports_pubs/Traffic_Report/

1 *constitution or the laws of the United States, (or because of his/her*
2 *having exercised the same). Unlike most conspiracy statutes,*
3 *Section 241 does not require that one of the conspirators commit*
4 *an overt act prior to the conspiracy becoming a crime.”*

5 21. Thus, the stop lacked Probable Cause for each of the following;

- 6 1. Illegal use of official federal R2-1 traffic control device by Nevada, and
7 prosecution (sic) stems from the fruit of multiple illegal acts;
- 8 2. NRS 484.361(3)(4) police powers repealed, in conflict or displaced by
9 state and federal law, thereby lacking foundation;
- 10 3. In this instance, Nevada posted a proscribed 70 mph arbitrary and
11 capricious value that lacked foundation on an official federally regulated
12 device, because the State did not perform the required comprehensive
13 engineering studies to determine: 1) If a speed limit is warranted; 2) And
14 if so, the safety value to post; 3) And the range of safe speeds, where
15 speed in excess would constitute probable cause of an unsafe act;
- 16 4. Basic Speed Rule per the UVC § 11-801 (reasonable and prudent), and
17 subordinate NRS 484.361(1)(2), both trump the posted limit;
- 18 5. Whereas, an invented posted value, enforcement threshold, and speed in
19 excess of an invented value, all lack foundation;
- 20 6. Speed in itself violates no laws; and absent a finding of fact, via a
21 compliant comprehensive study(3) that is documented and can be cross
22 examined, MELENDEZ-DIAZ v. MASSACHUSETTS, No. 07-591
23 (2009), as to veracity applying nationally recognized practices and
24 standards: The officer must have prior knowledge of these facts, and if
25 not, the officer is incompetent to testify as to an unsafe act or probable
26 cause;
- 27 7. In this case the posted safety value is invented, and the not to exceed
28 enforcement threshold is invented, therefore the probable cause is also
invented and lacked foundation; whereas, the US Supreme Court decided
in Whren et al. v. United States, 517 U.S. 806 (1996). that probable cause
is a necessary pretext for any traffic stop.
8. Thus, the Defendant’s traffic stop for all the above lacked probable cause.

IV.

VIOLATES EQUAL PROTECTION CLAUSE

22. Uniformity is implicit, and all acts shall be in substantial conformance in this field.
Federal uniformity in this field includes: Appearance, application, expectation, class of crime,
standard of adjudication, and fine assessment; as well as the right to travel that is BASED on

1 the Inalienable Rights of both Liberty and Property, commerce and its instrumentalities;
2 driver's license, vehicle, or Constitutional rights that become inclusive in a federally regulated
3 field or within the domain of a designated instrument of travel. The standards to be applied in
4 application, expectation, and the exercise of police powers in all respects shall be substantially
5 uniform in Nevada, Maine, Oregon, Utah, and California etc.

6 23. The presumption for speed limit violations is a federal class 3 or 4 misdemeanor; but
7 until a uniform expectation and penalty schedule is defined for the 80 thousand or so
8 jurisdiction involved, this too is Void for Vagueness¹⁶, violates Equal Protection¹⁷, and is
9 unenforceable in this instance because absent a compliant federal standard, equal protection
10 and substantive due process is unobtainable. It's also incontrovertible that Nevada's fees and
11 fine schedules are unique, and not based on a national uniform standard. The following was on
12 disparate treatment of traffic fines and fees alone:

13 *U.S. Court of Appeals for the Ninth Circuit, United States v.*
14 *Trimble, 487 F.3d 752, Ninth Circuit (2007) "We reverse -*
15 *demonstrating, again, that our Constitutional principles protect*
16 *against monetary injuries large and small." ... "and therefore the*
17 *fees violated the equal protection principles incorporated into the*
18 *Fifth Amendment"*

19 24. Sanctions against a driver's license must be in full compliance with the 1966 Act,
20 because the US Supreme Court on four occasions has ruled a driver's license is a
21 constitutionally protected property interest/right¹⁸; and since the 1966 Act, it's also become a
22 protected instrument of an inalienable right to travel. Therefore, it's subject to federal
23 Constitutional substantive and procedural due process including equal protection, probable
24 cause founded on a demonstrable unsafe act, and a "beyond a reasonable doubt" standard of

25 ¹⁶ *Giaccio v. State of Pennsylvania, 382 U.S. 399; 86 S.Ct. 518 (1966)*

26 ¹⁷ *United States v. Trimble, 487 F.3d 752, Ninth Circuit (2007)*

27 ¹⁸ *Bell v. Burson. (Georgia) - U.S. Supreme Court - 402 U.S. 535 (1971); Dixon v. Love.*

28 *(Illinois) - U.S. Supreme Court - 431 U.S. 105 (1977); Mackey v. Montrym. (Massachusetts) - U.S.*
Supreme Court - 443 U.S. 1 (1979); Illinois V. Batchelder. (Illinois) - U.S. Supreme Court - 463
U.S. 1112 (1983)

1 adjudication; and it cannot be abridged or impinged with a lesser standard of preponderance of
2 evidence, legislative fiat, or for non germane acts;

3 V.

4 **VOID FOR VAGUENESS**

5 25. The 5th Amendment requires Equal Protection, and when the USDOT oversight
6 nonfeasance¹⁹ allowed 80 thousand political entities in the US and its Territories to establish
7 disparate standards of expectation, adjudication²⁰, and fees and fines²¹ from sign to sign in a
8 field under the color of federal law: This violates the 5th Amendment, for it violates the Void
9 for Vagueness²² doctrine.
10

11 *Void for Vagueness doctrine: "If a person of ordinary intelligence*
12 *cannot determine what persons are regulated, what conduct is*
13 *prohibited, or what punishment may be imposed under a particular*
14 *law, then the law will be deemed unconstitutionally vague. The*
15 *U.S. Supreme Court has said that no one may be required at peril*
16 *of life, liberty, or property to speculate as to the meaning of a*
17 *penal law. Everyone is entitled to know what the government*
18 *commands or forbids."*

19 26. For illustrative purposes, the following data was gleaned from several government
20 websites; and the daunting numbers explaining why there can only be one standard under the
21 color of federal law.

22 In the US²³, not counting its territories, there are 3143 counties, 44,829 incorporated
23 cities, townships etc. and another 30,000 unincorporated self rule entities; AND hundreds of
24 military bases, 391 National Parks, 177 national Forest, 258 million acres of BLM land, 562
25 Indian reservations and tens of thousands of other entities open to public travel that employ

26

¹⁹ USDOT: illegal inclusions in the MUTCD and due process violations et al (12/20/2000)
http://www.hwysafety.com/mutcd_statutory_letter.htm
²⁰ Musser v. Utah, 333 U.S. 95, 97 (1948)
²¹ United States v. Trimble, 487 F.3d 752, Ninth Circuit (2007)
²² Giaccio v. State of Pennsylvania, 382 U.S. 399; 86 S.Ct. 518 (1966)
²³<http://www.capitolimpact.com/>

1 traffic control devices (shopping centers, private housing developments, golf courses etc.)
2 Because of the nonfeasance and misfeasance of the USDOT, including their oversight of
3 Nevada, most of these entities erroneously claim some form of autonomy, home rule,
4 sovereignty; or that they can pick and choose in regards to traffic control and adjudication
5 standards, and that the Constitution, UVC, and MUTCD mandates are nothing more than
6 guidelines (or in the instant case, that they don't apply to them).

7 Whereas, the current status quo and lack of any meaningful oversight has left motorists
8 in a state of anarchy in expectation, with 18,898 local and state law enforcement agencies and
9 19,238 state and local courts (plus the Indian reservation police, military, federal and territorial
10 authorities) enforcing their own local expectations, mostly based on whim, encompassing the 4
11 million plus miles of road and untold miles of trails and waterways²⁴.

12 27. Void for Vagueness: In this instance, given the tens of thousands of entities in the US,
13 how could a motorist know that per the whim of a political appointee 15 years ago that the next
14 speed limit sign they come upon, it's a crime *under the color of federal law* to violate its
15 proscribed invented value when NDOT et al had constructive knowledge it was unfounded and
16 unlawful? And that the proscribed value was placed on an official federal regulatory device
17 absent the required legal foundations. And was de facto unposted, because the signs are up to
18 20 miles and more apart, applying invented probable cause(s), and disparate local standards of
19 adjudication, fines, and court rules.

20 VI.

21 **VIOLATES SUBSTANTIVE AND PROCEDURAL DUE PROCESS**

22 28. The Nevada Legislature, NDOT et al, or the USDOT for that matter, cannot pick and
23 choose which laws it wishes to comply with, or not comply with; and Nevada's Laws in
24 regards to traffic control and police powers on roadways and bike paths open to public travel
25 have become a labyrinth of unconstitutional practices, decrees, invented numerics, enforcement
26

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²⁴<http://nationalatlas.gov/transportation.html>

1 condition clauses and the exercise of police powers that are non conforming, superseded,
2 repealed by Congress, or contrary to the Rule of Law and the Law of the Land; nor can the
3 USDOT et al recede to the States unconstitutional authorities.

4 **VII.**

5 **UNDER THE COLOR OF FEDERAL LAW**

6 29. Under the Color of Federal Law: All federal regulations, laws and the exercise of police
7 powers in this field are subordinate to the US Constitution, and Congress' Intent respectively,
8 and shall be uniform and in substantial conformance. Each act in its promulgation, and the
9 exercise of police powers thereof, shall:

- 10 1. be narrowly tailored and vetted as to factual foundations, such that it will
11 achieve its desired effect, and be reviewed and examined for unintended
12 consequences; especially regarding how trends may alter the efficacy or need of
13 the proposed remedy, and its effects on commerce and substantive due process;
- 14 2. be promulgated in substantial conformance with a single uniform application,
15 appearance, expectation, and adjudication standard - regardless of entity type or
16 jurisdiction in the United States and its Territories;
- 17 3. be fact based i.e. as per nationally recognized engineering institutions and
18 scientific methodologies etc.; in which all subordinate act's foundation or
19 justifications can be cross-examined in a court of law; and
- 20 4. be in conformance with the domain of the Constitution per the Commerce,
21 Supremacy and Equal Protection Clause(s), and Congress' intent et al in this
22 field.

23 **VIII.**

24 **UNCONSTITUTIONAL ACTS ARE NOT LAW**

25 30. There is no debate as to the absolute intent of our Founding Fathers to reserve to
26 Congress the regulation of the nation's post roads (highways) in the interest of national defense
27 and commerce; or of Congress' invocation of the Commerce Clause in the Highway Safety Act
28 of 1966 to preempt the regulation of all "traffic control, vehicle codes and laws" to achieve
"roadway safety" and "uniformity" within the United States and its Territories, via fact based
standards and uniformity of expectations as to the exercise of police powers thereof in a federal
system that encompasses this entire field.

1 31. We must distinguish form and substance. Not just anything passed by legislators that
2 have the form of a law, is in fact, a law. To be a law, an enactment must be constitutional, i.e.,
3 within the actual de jure authority of the Legislature.

4 This is res judicata. “All laws which are repugnant to the Constitution are null and
5 void.” Marbury v Madison, 5 US (2 Cranch) 137, 174, 176; 2 LE 60 (1803). “Where rights
6 secured by the Constitution are involved, there can be no rule making or legislation which
7 would abrogate them.” Miranda v Arizona, 384 US 436, 491; 86 S Ct 1602; 16 L Ed 2d 694
8 (1966). “An unconstitutional act is not law; it confers no rights; it imposes no duties; affords
9 no protection; creates no office. It is in legal contemplation, as inoperative as though it had
10 never been passed.” Norton v Shelby County, Tennessee, 118 US 425, 442; 6 S Ct 1121; 30 L
11 Ed 178 (1886).

12 IX.

13 REQUEST

14 WHEREFORE, Defendant request that the Court will grant this motion or to set this
15 matter for a hearing, and to otherwise withhold any order on the Defendant 's motion, and upon
16 hearing, order that:

17 A. any and all evidence obtained as fruits of an illegal arrest, i.e. obtained without
18 probable cause, due process, equal protection, etc., be suppressed and the case dismissed;

19 B. that any and all evidence that lacks foundation be suppressed, including the 70 mph
20 posted value in this instance, absent the State’s production of said complying
21 comprehensive traffic engineering study dated 1995, and hence per the MUTCD in 2000,
22 and 2003 respectfully ; and

23 C. Defendant Richard Glen Colter also respectfully requests that this Court forward this
24 Motion to Dismiss et al to the State AG, thus relaying the import of the facts herein: that
25 the Constitutional Rights’ of a Citizen should apply in a Nevada Court of Record; and
26 that the State must promulgate its statutes and standards to recognize the full Federal
27 Constitutional rights and protections for our Citizens, and Nevada’s statutes and practices
28

1 must be in substantial conformance with all applicable federal condition precedents in
2 this field; and

3 D. In the Alternative, Notice of Intent to Remove is tendered, whereby this case be
4 removed to the 9th Circuit to cure the federal issues; and pursuant to cause for removal:

5 E. Defendant hereby incorporates by reference all arguments, allegations, charges, and
6 the seven causes of action appearing in the attached exhibit titled "Federal Complaint" as
7 though fully set forth within this Motion to Dismiss.

8 Dated this 24th day of January, 2011

9 RICHARD GLEN COLTER, Propria Persona and
10 in the Alternative Private Attorney General, Ex
11 Relatione, United States of America

12
13 CERTIFICATE OF SERVICE

14 I, the undersigned, hereby certify that a true and correct copy of the foregoing Motion
15 was also forwarded to Mr. Arthur Wehrmeister District Attorney, via fax to 775.485.6356, on
16 this the 17th day of January, 2011, in accordance with the rules governing same.

17 Respectfully Submitted,

18
19 _____
20 RICHARD GLEN COLTER

21
22
23 ORDER

24 ON THIS the _____ day of _____, 201__ came on to be heard the foregoing
25 Motion to Dismiss, and same is hereby GRANTED/DENIED, to which action Defendant
26 accepted.

27 _____ JUDGE
28

1 EXHIBIT 1: 1995 NDOT – CERTIFICATION OF ESTABLISHMENT OF SPEED LIMITS ON
2 STATE HIGHWAYS IN NEVADA

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