

IN THE SUPREME COURT OF THE STATE OF NEVADA

A.J., a 16-year-old foster child,

) S.C. No.

) Petitioner,

) vs.

) The Eighth Judicial District Court of the
) State of Nevada, Juvenile Division, in
) and for the County of Clark, the
) Honorable William O. Voy, District
) Court Judge,

(D.C. No. J-15-337227-D/1/2/4)

(Department A, Clerk of Court) Electronically Filed
Apr 11 2016 09:08 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

) Respondent.

Petition for Writ of Mandamus or Prohibition

Petitioner A.J., a 16-year-old foster child, by and through her undersigned counsel, respectfully petitions this Honorable Court to issue a writ of mandamus or prohibition pursuant to NRAP 21 and NRS 34.160, to direct the Eighth Judicial District Court, Juvenile Division (Juvenile Court), to vacate its unlawful orders adjudicating A.J. delinquent on petitions 1, 2, and 4. In place of these orders, A.J. petitions this Court to direct the juvenile court to order court supervision pursuant to a consent decree under Nevada's recently passed law, Assembly Bill 153 (2015), and to order the services specified for sexually exploited children provided in that law.

Consequently, A.J. requests this Court to direct the juvenile court to order the Nevada Department of Health and Human Services, Division of Child and Family Services, Youth Parole Bureau to release A.J. from confinement at the Caliente Youth Center (CYC), a state juvenile correctional facility, and to return her to the custody of the Clark County Department of Family Services (DFS) in

foster care, placing her on an electronic monitoring device for her own protection and safety. A.J. further petitions this Court to direct the juvenile court to place A.J. in a temporary placement suitable for children in protective custody under NRS 432B.390 § 6, rather than a detention facility in violation of NRS 432.525 § 9, until DFS moves her to another suitable placement.

Additionally, A.J. requests this Court to direct the juvenile court to order DFS, A.J.'s legal guardian, over whom the juvenile court has jurisdiction, to find A.J. a safe, healthy, stable, and comfortable long-term placement pursuant to NRS 432.530 § 1, other than a detention facility in violation of NRS 432.525 § 9, within 14 calendar days.

This petition is based upon the Memorandum of Points and Authorities, Subject Minor's "Motion to Terminate or Modify Orders," the State's opposition to that motion and the subject minor's reply, the content and discussions of the hearing on March 15, 2016, and all the evidence submitted here and below.

DATED this 8th day of April, 2016.

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MEMORANDUM OF POINTS AND AUTHORITIES

Introduction

Federal law defines sex trafficking as the recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act, when the commercial sex act is induced by force, fraud, or coercion.¹ Any child who is engaged in the commercial sex market is a victim of sex trafficking regardless of the use of force, fraud, or coercion.²

Sex-trafficked children are often referred to as criminals, child prostitutes, runaways, addicts, or juvenile delinquents.³ Yet in 2015, Nevada lawmakers passed Assembly Bill 153, unanimously voting that sex-trafficked children in Nevada are not prostitutes or delinquents: they are victims.⁴ Governor Brian Sandoval signed AB 153 into law on May 25, 2015 to end the practice of adjudicating children delinquent for conduct incident to their sex-trafficking victimization.⁵ AB 153 provides that these child victims be placed under protective court supervision pursuant to a consent decree, without a formal adjudication of delinquency, and ordered services for the victims of sexual assault.

¹ 22 U.S.C. § 7102(9)-(10) (2012).

² *Id.* at 7102(9).

³ *Domestic Human Trafficking: An Internal Issue*, Human Smuggling and Trafficking Center, 2 (Dec. 2008), <http://www.state.gov/documents/organization/113612.pdf>.

⁴ Assemb. B. 153, 78th Legis. Sess., Reg. Sess. (Nev. 2015).

⁵ *See AB 153*, Nev. Leg., <https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?ID=336> (AB 153 is a recent bill that passed unanimously in both houses of the legislature in the spring of 2015, and the Governor signed it into law on May 25, 2015.)

Less than two months after the governor signed AB 153 into law, Las Vegas Metropolitan Police Department (LVMPD) officers observed A.J., a 15-year-old, female, foster child, walking up and down Tropicana Avenue, beckoning motorists, apparently soliciting prostitution.⁶ When the officers questioned A.J., she admitted that she was attempting to solicit prostitution.⁷ Accordingly, law enforcement arrested and detained A.J. at the Clark County Juvenile Detention Center for the sole charges of “Engaging in Prostitution/Loitering Prostitution.”⁸ However, the Clark County District Attorney filed a delinquency petition against A.J. for only “Obstruction of an Officer”⁹—an incident offense to prostitution or solicitation—because A.J. initially refused to speak with the officers.¹⁰ For this charge, the juvenile court adjudicated A.J. “delinquent” and ordered formal probation, despite the underlying reality that she was arrested for engaging in solicitation of prostitution and is thus a victim of sex trafficking and exploitation.¹¹

An inconsonant, overly rigid, and narrow reading of the literal language of paragraph 1 of AB 153 could lead one to conclude that where a child is arrested for being exploited in the sex trade—clearly demonstrated by the referral charges or

⁶ Ex. B at 009–11.

⁷ *See id.*

⁸ *See id.*

⁹ *See id.*; Ex. A at 001–02 (Pet. 1).

¹⁰ *See* Chariane K. Forrey, *America’s “Disneyland of Sex”: Exploring the Problem of Sex Trafficking in Las Vegas and Nevada’s Response*, 14 Nev. L.J. 970, 978 (2014) (citing Domestic Sex Trafficking: The Criminal Operations of the American Pimp, Polaris Project 2, 5, http://www.dcjs.virginia.gov/victims/humantrafficking/vs/documents/Domestic_Sex_Trafficking_Guide.pdf) (sex-trafficking victims are often afraid of interacting with law enforcement).

¹¹ *See* D.C. No. J-15-337227-D1; Ex. D at 018–019; Ex. B at 009–11; Ex. E at 031.

the underlying operative facts of arrest—the district attorney has the unilateral and arbitrary discretion to circumvent triggering the protections of that new law by simply filing a petition that does not list the words “prostitution” or “solicitation” as one of the charges. But such an unduly narrow construction of AB 153 is incongruent with the commonsense understanding of the legislative intent for this law. The legislature clearly attempted to create a law to end the practice of adjudicating sex-trafficked children as delinquent children:

By passing A.B. 153 we are allowing these [child-victims of sex trafficking and sexual exploitation] to reach out to the advocates in the community to pick them up and bring them back. They need to be told that they will not do time because they are not criminals, they are victims. We have these services in place and will be able to help them. I believe A.B. 153 will do that. We already have things in place that we can bring to the table. We need to reinforce the law by arresting the johns and clients who come to this town and solicit sex from our children. We need to hold them accountable. These are children in need of supervision, and once these victims step up to the plate, they can access all of the services that they cannot now because they are adjudicated as a delinquent and not as a child in need of supervision. I work with them every day and see their struggles.¹²

If the district attorney could elect to avoid triggering the provisions of AB 153—regardless of whether the commonsense description of the underlying operative facts of arrest constitute prostitution or solicitation—by simply instead charging the child with some other unlawful conduct commonly incident to sex-trafficking victimization, the charges may paradoxically result in a delinquency

¹² *Minutes of the Meeting of the Assemb. Comm. on Judiciary*, 78th Legis. Sess., 12-13 (Mar. 3, 2015), <https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/JUD/Final/328.pdf> (testimony of Esther Rodriguez Brown, Founder of the Embracing Project, L.V., Nev.).

adjudication, and more restrictive consequences for the child, than had the petition charged the child with “prostitution” or “solicitation.” If true, the district attorney could almost always avoid triggering AB 153. This reading would effectively erase the protections and services prescribed by AB 153 that the Nevada Legislature intended to provide to all children who are arrested for their exploitation as sex-trafficking victims. This is not the law.

But this is exactly how the State and the juvenile court proceeded in the delinquency proceedings against A.J.—a result that is both sad and contrary to the will of the Nevada Legislature. A.J., now a 16-year-old foster child, is a survivor of sex trafficking.¹³ Countless older men, including her pimp, have raped her.¹⁴ Law enforcement has witnessed A.J.’s exploitation on the streets of the Las Vegas sex market at least twice.¹⁵ Since A.J.’s first petition, all of her arrests have been for solicitation, prostitution, or for violating the probation that resulted from those activities.¹⁶ A.J. is thus both factually and legally the victim of sexual assault and sex trafficking in Nevada.¹⁷ And yet the district attorney has never listed “solicitation” or “prostitution” as a charge in any of its petitions against A.J., despite law enforcement citing those activities as the sole basis for arresting her. Instead, the State continued to charge A.J. with crimes incident to prostitution,

¹³ See Ex. E; Ex. B.

¹⁴ See Ex. E.

¹⁵ Ex. B, at 009–012.

¹⁶ See Ex. F at 033.

¹⁷ See generally Ex. G.

such as “obstruction of an officer” or “violation of probation,”¹⁸ which resulted in more restrictive consequences for A.J. than should be possible under AB 153.

The juvenile court adjudicated A.J. “delinquent” and ordered formal probation. After several violations of her formal probation, the juvenile court ordered A.J.’s commitment to the Caliente Youth Center, a state juvenile correctional facility. However, under AB 153, the juvenile court was barred from adjudicating A.J. a juvenile delinquent and committing her to a state correctional facility for her sexual exploitation. Therefore, AB 153 makes A.J.’s continued detention at this time unlawful and an illegal seizure under Article 1, section 18 of the Nevada Constitution and the Fourth and Fourteenth Amendments of the United States Constitution.

A.J. pleas with this Honorable Court to remedy these unlawful orders and to hold that her situation falls under the umbrella of AB 153. She requests that this Court directs the juvenile court to: (1) vacate her adjudications of delinquency for petitions 1, 2, and 4; (2) vacate her probation and commitment orders; (3) order court supervision pursuant to a consent decree; and (4) order the services specified for sexually exploited children under AB 153.

A.J. further requests this Court to clarify the law regarding AB 153, holding that AB 153 applies whenever persuasive evidence establishes that a child was arrested or brought under the jurisdiction of the juvenile court for conduct pertaining to sexual exploitation.

¹⁸ Ex. A; Ex. F at 032–33.

Statement of the Issue

Whether Assembly Bill 153¹⁹ applies to sex-trafficked and exploited children who are arrested for solicitation or prostitution, demonstrated clearly by the referral charge, underlying facts of arrest, or other persuasive evidence, even when the District Attorney leaves the words “solicitation” or “prostitution” off of the delinquency petition that it files as a result of these core operative facts.

Facts & Procedure

A.J. is a teenage mother and a foster child who has been in foster care since she was six years old.²⁰ Although she was adopted when she was eight, A.J. was forced back into the foster care system shortly thereafter when her adoptive father sexually assaulted her.²¹ Since then, A.J. has been in and out of foster homes, living without any semblance of a consistent family structure to love and care for her and her two-year-old daughter.²² This history made A.J. a prime target for recruitment into the sex trade.²³

¹⁹ Assemb. B. 153 § 6.5, 78th Legis. Sess., Reg. Sess. (Nev. 2015).

²⁰ Ex. F, at 035–37.

²¹ *Id.*

²² *Id.*

²³ See Forrey, 14 Nev. L.J. at 976–977 (“Pimps recruit vulnerable individuals in locations like foster homes. . . . During this recruiting period, pimps may lavish the victim with gifts or physical intimacy.”); Neha A. Deshpande & Nawal M. Nour, *Sex Trafficking of Women and Girls*, Reviews in Obstetrics and Gynecology, 6(1), e22–e27 (2013) (<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3651545/>) (“Traffickers and/or pimps commonly recruit potential victims who are either economically or socially vulnerable. These include women and girls who are susceptible to poverty, societal isolation, drug addiction, violence in the family, a history of child sexual abuse, family dysfunction, school failure, or a history of criminal behavior.”).

When A.J. was 15 years old, she recalls being approached by an older man on the bus who cleverly and methodically recruited her into the sex trade.²⁴ As so many other young female victims have experienced in our state, this man bought A.J. nice clothes and made her feel special, only to eventually use her as a sexual product, selling her to countless child rapists in Las Vegas on a nightly basis.²⁵

This man beat A.J., threatened her, and finally convinced her to leave her home to live with him. After she moved in with him, he repeatedly raped her.²⁶ But, as is also true with so many other manipulated girls in this situation, A.J. likely did not understand that she was a victim (and probably still does not understand this).²⁷ But before A.J. was ever arrested, Nevada lawmakers passed AB 153, recognizing these girls as “victims of sexual assault” and providing them with a program for the juvenile court’s supervision and care.²⁸

About three months after A.J. was first recruited into the Las Vegas sex trade, local law enforcement observed A.J. “working as [a] prostitute[] in the area of Tropicana and Valley View” with another child.²⁹ An officer observed her

²⁴ See Ex. E.

²⁵ See generally Ex. E; see also Forrey, 14 Nev. L.J. at 977 (“in the United States, the most common way that women and children become trafficking victims is by falling for the ‘boyfriend,’ or pimp.” (citing Rachael Lloyd, *Girls Like Us: Fighting for a World Where Girls Are Not For Sale, An Activist Finds Her Calling and Heals Herself* 74 (2011))).

²⁶ See Ex. E ¶ 5–6.

²⁷ See Forrey, 14 Nev. L.J. at 976 (“Trafficked women and children may not identify themselves as victims because of fear or psychological and emotional manipulation.”).

²⁸ Ex. G (AB 153 §1(a)(1 & 2)).

²⁹ Ex. B at 009.

“walking back and forth on Tropicana,” repeatedly beckoning motor vehicles as they stood at the corner of the street “by making eye contact with motorist[s],” and “waving at ongoing vehicles on Tropicana in attempts to have them stop.”³⁰ When finally approached by law enforcement, A.J. initially refused to speak with them, telling them that she does not like Vice.³¹ But when she eventually did speak with the officers, she admitted that she had been engaging in prostitution and revealed details to the officers about how she arranged the encounters. The officers arrested her, listing “Engaging in Prostitution/Loitering Prostitution” as the sole arresting offenses.³² However, the petition filed by the district attorney did not include prostitution or solicitation as a charge.³³ Therefore, the juvenile court did not apply AB 153 to A.J.’s case, which required the court to order protective court supervision and services for those exploited by the sex trade and disallowed a formal adjudication of delinquency. Instead, the juvenile court adjudicated A.J. delinquent for “obstructing an officer” and ordered probation.

Not long after A.J.’s release, law enforcement found A.J. back on the street, this time catching her directly in the act of soliciting an undercover officer.³⁴ A.J. had agreed to perform fellatio on the officer for \$50 and then agreed to sex for \$100.³⁵ Again, law enforcement discovered A.J. as she was being sexually

³⁰ *Id.* at 009–10.

³¹ *Id.* at 010.

³² Ex. F at 033; Ex. B at 009.

³³ Ex. F at 033; Ex. A at 001–02.

³⁴ Ex. B at 012.

³⁵ *Id.*

exploited in the sex trade and arrested her for the sole charge of “Solicitation of Prostitution.”³⁶ As before, the petition filed by the State did not include the solicitation charge—again avoiding the court supervision and treatment programs prescribed by AB 153 for sex-trafficked children. Rather, the juvenile court adjudicated A.J. delinquent for violating probation.

As a result of this arrest, A.J. was permanently kicked out of her foster home. A.J. discovered that she was no longer welcome back in the home while she was in custody at the juvenile detention facility.³⁷ Because DFS—A.J.’s guardian—failed to promptly find her a new home, the juvenile court placed A.J. on a GPS monitor and released her to Child Haven.³⁸ A.J. ran away several days later—with her GPS unit still on—reporting that an employee of Child Haven had previously sexually abused her.³⁹ After her re-arrest, A.J. returned to juvenile detention.

DFS again failed to promptly find A.J. a new placement. The result was that A.J. remained in the juvenile detention facility for a total of 32 days (36 including the days in detention before Child Haven), most of which was after the juvenile court had already ordered her release to continue probation.⁴⁰ Thus, as a result of “violating probation” (by being sexually exploited) and DFS’s failure to promptly

³⁶ *Id.*

³⁷ This Court may take judicial notice of the discussion of these facts held in court during A.J.’s repeated status-check hearings in the juvenile court following petition 2, wherein the court inquired into the status of DFS’s placement search. *See* Ex. D.

³⁸ *See* Ex. F at 035.

³⁹ *See* Ex. D at 026.

⁴⁰ *See* Ex. F at 033–035.

find one of its foster children a new home, A.J. spent over a month in juvenile detention. Finally, the juvenile court intervened and found a temporary placement for A.J. until another home would become available.⁴¹ But A.J. eventually ran from that permanent placement too.

After being on the run, A.J. surrendered herself to the Probation Intake window on January 7, 2016.⁴² The State again petitioned for A.J.'s delinquency for running away while on formal probation.⁴³ On January 13, 2016, A.J. admitted to violating the terms of formal probation.⁴⁴ On January 27, the juvenile court ordered A.J. to be committed to a state correctional facility. A.J. spent four more weeks in the juvenile detention facility until she was finally transported to Caliente Youth Center in Caliente, Nevada, where A.J. has been ever since. A.J. has been in custody since she turned herself in on January 7.⁴⁵

Later, A.J. shared with her counsel further details of her sexual exploitation and recruitment into the sex trade, and on February 23, A.J. shared a declaration to this effect with the juvenile court.⁴⁶ Accordingly, her counsel moved under NRS 62E.020 for the court to vacate and modify its orders to come into compliance with Nevada's recently and unanimously passed law, AB 153.⁴⁷

⁴¹ Ex. D at 020–021.

⁴² Ex. F at 033.

⁴³ Ex. A at 003 (Pet. 2); Ex. F at 033.

⁴⁴ Ex. D at 023, 27.

⁴⁵ Declaration of Counsel, Stephen Alexander Spelman, p. 28, ¶ 5.

⁴⁶ Ex. E.

⁴⁷ Ex. J.

On March 15, 2016, the juvenile court denied A.J.'s motion because (1) the court construed AB 153 to be triggered exclusively at the District Attorney's election (only when the District Attorney *chooses* to file a petition listing "solicitation" or "prostitution" as a charge, regardless of the underlying operative facts or the referral charge), and (2) despite the contrary directive of AB 153 for sex-trafficked girls, the court found that correctional, long-term commitment to be in the best interest of sexually exploited girls for their own safety.⁴⁸ In other words, the juvenile court concluded that the State has the unfettered discretion to avoid triggering the protections of AB 153 by electing to charge a sex-trafficked child with a traditionally *less serious* delinquency charge than "solicitation" or "prostitution," paradoxically allowing for *more serious* consequences for the child.

As of the date of this filing, A.J. has served a total of 129 days in custody since she was arrested for petition 1 on July 11, 2015.⁴⁹ In other words, for an initial charge of "obstructing an officer"—when she was actually arrested for prostitution as a victim of child sex trafficking—she has served over four months in custody. Now, A.J. is in state custody and detained at the Caliente Youth Center in Caliente, Nevada, which is located nearly three hours away from Clark County.

Argument

⁴⁸ The Juvenile Court does not transcribe court hearings unless they are specifically ordered. The court has ordered the transcript in this case. *See Spelman Decl.* p. 28, ¶ 3. But because A.J. seeks a speedy remedy, she has filed this petition without the transcript yet available. A CD is available, upon request, containing a video of this court hearing from A.J.'s counsel or from the court clerk.

⁴⁹ *See Ex. F* at 034–35.

- I. The Nevada Legislature has recently and unanimously decided that children who are the victims of sex trafficking, including A.J., shall be treated as victims, and, as such, offered help through court supervision, without an adjudication of delinquency for activities incident to solicitation and prostitution.**

Under Nevada law, A.J. should never have been adjudicated delinquent for conduct incident to her sexual exploitation. Thus, without a legally sound basis for detention, A.J.'s continued confinement violates Article 1, section 18 of the Nevada Constitution and the Fourth and Fourteenth Amendments to the United States Constitution. The juvenile court⁵⁰ has a duty to correct its unlawful delinquency adjudications, formal probation orders, and commitment order of A.J., a sexually victimized child who is protected from prosecution by AB 153, and must order her release back into DFS's care.

This case presents a statutory interpretation issue of first impression. Even when a question of statutory interpretation is "raised in a writ petition, this court reviews questions of statutory interpretation de novo."⁵¹ For bills that serve a "protective purpose," this Court employs a specific rule of statutory interpretation:

We have stated that "[w]hen examining a statute, this court should ascribe plain meaning to its words, unless the plain meaning was clearly not intended. However, "[s]tatutes with a protective purpose should be liberally construed in order to effectuate the benefits intended to be obtained."⁵²

⁵⁰ The juvenile court is an informal, problem-solving court that exists primarily to protect the best interests of the children that come before it. *See generally* Nev. Rev. Stat. § 62B (2015).

⁵¹ *Cote H. v. Eighth Judicial Dist. Court ex rel. County of Clark*, 124 Nev. 36, 40 (2008) (citing *Marquis & Aurbach v. Dist. Ct.*, 122 Nev. 1147 (2006)).

⁵² *Id.*

In 2015, the Nevada Legislature unanimously passed AB 153 as a way to end the practice of prosecuting sexually exploited youth and committing them to correctional facilities. Instead, the bill places child victims under the supervision of the juvenile court without an adjudication of delinquency. On May 25, 2015, Governor Sandoval signed the bill into law.⁵³ This bill brought Nevada closer in line with the federal law that deems a child involved in selling commercial sex to be a trafficking victim entitled to protection.⁵⁴ AB 153 serves a protective purpose.

In the instant case, the consequences of the juvenile court's overly-rigid and narrow reading of paragraph 1 of AB 153 is both sad and contrary to the clear, commonsense intention of the Nevada Legislature, which voted to end the practice of treating child sex-trafficking victims as juvenile delinquents. While the juvenile court has a broad power to order what it concludes to be in the best interest of the children who come before it, the outer-limits of its power are marked by the express will of the Nevada Legislature. Indeed, the central function of the judiciary is to give effect to the will of the legislature.

The text and legislative history of AB 153 demonstrate that, by passing this bill, the legislature adopted the position that exploited and sex-trafficked children

⁵³ See *Legis. Hist. of Assemb. B. 153*, Nev. Leg. (2015), <https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?ID=336>.

⁵⁴ Forrey, 14 Nev. L.J. at 990 (citing the "Victims of Violence Protection Act of 2000," also called the TVPA, Pub. L. No. 106-386, 114 Stat. 1464, 1475 (2000)). The TVPA has been reauthorized on numerous occasions: in 2003, Pub. L. No. 108-193; in 2005, Pub. L. No. 109-164; in 2008, Pub. L. No. 110-457; and in 2013, Pub. L. No. 113-4 (Violence Against Women Reauthorization Act of 2013).

are victims—not juvenile delinquents—for whom the court should provide the services necessary for them to lead productive lives.⁵⁵

Under A.B. 153, a juvenile arrested for solicitation will be given a consent decree rather than being treated as a juvenile delinquent. That is similar to a stay of adjudication in the adult system. This puts the juvenile under a county's jurisdiction. It is in the child's best interest to receive help from the county to meet his or her needs. The consent decree has conditions. A juvenile would enter a plea as a consent decree so he or she would not be adjudicated. It is important a juvenile have conditions. If a juvenile violates those conditions, there is a mechanism that would not treat victims as criminals. If conditions are violated, the district attorney will not be able to file a delinquent petition as a result of the violation. The district attorney can file an additional petition if it is an act not relating to the circumstance surrounding the decree. A juvenile under a consent decree who robs a store can be charged for that act. . . . If a juvenile is in the process of having a consent decree and reengages in prostitution or pandering, the conditions are not enough to address the issue and need to be expanded. The ultimate goal is to not treat victims as criminals.⁵⁶

AB 153 is a statute with a protective purpose, construed liberally “in order to effectuate the benefits intended to be obtained.”⁵⁷ The touchstone for interpreting this law must be common sense. The legislature intended to help the victims of

⁵⁵ *Id. Minutes of the S. Comm. on Judiciary*, 78th Legis. Sess., 13 (Apr. 29, 2015) <https://www.leg.state.nv.us/Session/78th2015/Minutes/Senate/JUD/Final/1028.pdf> (“The Juvenile Division of the Clark County District Attorney fully supports A.B. 153. . . . [The District Attorney is] treating these children as victims, not delinquents.”); *Id.* at 11 (“The ultimate goal is to not treat victims as criminals.”); *Id.* at 10 (“It is not a delinquent act if a juvenile reengages with his or her panderer. . . . The juvenile would have additional services and conditions provided to prevent him or her from engaging in that lifestyle.”); *Id.* (“Under A.B. 153, a juvenile arrested for solicitation will be given a consent decree rather than being treated as a juvenile delinquent.”).

⁵⁶ *Minutes of the S. Comm. on Judiciary*, 78th Legis. Sess., 10-11 (Apr. 29, 2015) <https://www.leg.state.nv.us/Session/78th2015/Minutes/Senate/JUD/Final/1028.pdf> (testimony of Jason Frierson, Chair of the Legis. Comm. on Child Welfare and Juv. Just.).

⁵⁷ *Cote H.*, 124 Nev. at 40.

sex trafficking by forbidding juvenile delinquency adjudication for their conduct related to prostitution and solicitation. The legislative history does not support the conclusion that Nevada lawmakers intended to limit its recognition and protection of child sex-trafficking victims to only those instances in which the district attorney chooses to do so: that was a power that the district attorney could already exert before the passage of this law, through its power of prosecutorial discretion.

If AB 153 were so limited, its unanimous passage would have been a virtually useless, non-event.

But certainly the Nevada Legislature did intend to accomplish something by passing AB 153, and did not intend for the district attorney to be able to circumvent the provisions of this law by simply leaving the words “prostitution” or “solicitation” off the petition when a child is clearly arrested for that offense. Such a loophole would be pointless. It would completely blunt the effectiveness of this law and would serve no conceivable legislative purpose that did not already exist.

Therefore, the commonsense interpretation of this bill dictates that when the underlying circumstances of the arrest, the referral charge, or other persuasive evidence demonstrate that a child was engaging in prostitution or solicitation upon her arrest—and any additional unlawful acts are clearly incidental or related to that activity (e.g. obstructing an officer, loitering, trespass, minor in a gaming establishment, etc.)—then the law requires the court to apply AB 153 and to not

adjudicate her as a delinquent child for those activities.⁵⁸ In contrast, obviously, if a child commits a delinquent act not at all related to solicitation—e.g., she robs a bank—then the State can seek a delinquency adjudication against her for that conduct.⁵⁹ Again, the touchstone must be common sense.

Along the same logic, a petition “alleges” prostitution or solicitation for the purposes of AB 153⁶⁰ when the petition expressly incorporates the underlying law enforcement documentation of the event, such as the “LVMPD Event #” that refers to the declaration of arrest that is provided to all parties and the juvenile court.

Here, AB 153 applies to A.J. Law enforcement officers initially arrested A.J. for “Engaging in Prostitution/Loitering Prostitution” after observing her walking up and down the street, beckoning motorists, and ultimately admitting that she was soliciting prostitution.⁶¹ For petition 1, A.J. should have been placed on court supervision pursuant to a consent decree under AB 153, without a formal adjudication of delinquency, because she was clearly arrested for prostitution and solicitation. Also, AB 153 applies because A.J.’s first petition “alleges,” for the purposes of AB 153, “prostitution” or “solicitation” by expressly incorporating the

⁵⁸ See, e.g., *Minutes of the S. Comm. on Judiciary*, 78th Legis. Sess., 10 (Apr. 29, 2015) <https://www.leg.state.nv.us/Session/78th2015/Minutes/Senate/JUD/Final/1028.pdf> (“A juvenile *arrested for* solicitation will be given a consent decree rather than being treated as a juvenile delinquent.” (emphasis added)).

⁵⁹ See *id.* (noting that if a child in the consent decree program under AB 153 commits a delinquent act, “[t]he district attorney can file a petition if it is an act *not relating to the circumstances surrounding the decree*. A juvenile under a consent decree who robs a store can be charged for that act.” (emphasis added)).

⁶⁰ Exh. J (AB 153, § 6.5(1)).

⁶¹ Ex. B at 009–11 (Decl. of Arrest for Pet. 1).

underlying LVMPD documentation that specifically alleged that A.J. was “Engaging in Prostitution/Loitering Prostitution.”⁶² In other words, AB 153 applies because the commonsense understanding of the underlying operative facts for petition 1 is that solicitation or prostitution was the activity for which A.J. was brought under the juvenile court’s jurisdiction.⁶³ Therefore, AB 153 forbade the court from adjudicating A.J. delinquent on petition 1 and placing her on probation.

Similarly for petition 2, law enforcement officers arrested A.J. because they caught her in the act of soliciting an undercover officer.⁶⁴ But her petition charged her with only “Violation of Probation,” nonetheless “alleging” the fact that she was “associating with places involved in prostitution.”⁶⁵ Her subsequent two violations of probation (the juvenile court dismissed petition 3⁶⁶ and adjudicated her delinquent for violating probation on petition 4⁶⁷) were, of course, possible only because A.J. was on formal probation for petition 1 in the first place, rather than under non-delinquent, protective court supervision pursuant to AB 153.

Nevertheless, the juvenile court still wields the power to modify its unlawful orders “at any time”⁶⁸ and order the correct, legally prescribed program for A.J.

⁶² See Ex. A at 001; Ex. B at 009–11.

⁶³ See Ex. B at 009–11; Ex. D at 018 (item 6 of the sentence requires that A.J. has no contact with “persons and places involved in prostitution”).

⁶⁴ Ex. B at 012 (Declaration of Arrest for Pet. 2); Ex. C at 013 (“Charge(s)”: “MIS / Solicitation of Prostitution / Principal”); Ex. D at 017 (court minutes note that “Minor was picked up for solicitation of prostitution.”).

⁶⁵ Ex. A at 003.

⁶⁶ Ex. D at 022.

⁶⁷ Ex. D. at 023–24.

⁶⁸ See Nev. Rev. Stat. § 62E.020 (2015).

under AB 153. A.J. asks this Court to order the juvenile court to do so, recognizing her as a victim of sexual exploitation under AB 153, because she was arrested for engaging in prostitution and solicitation. A.J.'s other unlawful acts of "obstructing an officer" and "violating probation" were clearly incidental to her victimization. Had A.J. been under the court supervision program of AB 153, she would not have been on formal probation, she would not have violated probation, and she would not have been committed to a state correctional facility. She is entitled to relief from these unlawful outcomes.

Because A.J. was arrested for these activities after the passage of AB 153, her conduct did not constitute an offense that could result in a delinquency adjudication. Therefore, her continued detention now constitutes an illegal seizure under the Nevada and United States Constitutions. A.J. seeks this Court to direct the juvenile court to vacate her adjudications of delinquency and formal probation orders from petitions 1, 2, and 4 along with the juvenile court's most recent order to commit her to the state correctional facility. In place of those orders, A.J. asks this Court to order court supervision pursuant to a consent decree under AB 153 and the "services to address [her] sexual exploitation . . . and any other needs of the child including, without limitation, any counseling and medical treatment for victims of sexual assault in accordance with the provisions of NRS 217.280 to 217.350, inclusive."⁶⁹

⁶⁹ Ex. G (AB 153 § 1(a)(2)).

II. This Court has the power to, and should, issue this writ now.

Article 6, Section 4 of the Nevada Constitution provides this Court with the original jurisdiction to issue writs of mandamus and prohibition. This Court may issue a writ of mandamus:

~~... to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person.~~⁷⁰

A writ of mandamus or prohibition shall issue “in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law.”⁷¹ But even when a plain, adequate, and speedy remedy in the form of an appeal is available, this Court may consider a petition for writ when the issue presented “constitutes an important question of law that needs clarification,”⁷² or, in other words, “there are either urgent circumstances or important legal issues that need clarification in order to promote judicial economy and administration.”⁷³ Therefore, consideration of the writ petition is appropriate when it “involves a question of first impression that arises with some frequency” and where “the interests of judicial economy and administration favor consideration of the

⁷⁰ Nev. Rev. Stat. § 34.160 (2015).

⁷¹ Nev. Rev. Stat. §§ 34.170, 34.330 (2015).

⁷² *Cote H.*, 124 Nev. at 39.

⁷³ *State v. Eighth Jud. Dist. Ct. (Logan D.)*, 306 P.3d 369, 373 (2013).

petition.”⁷⁴ Relatedly, a writ of prohibition is available to halt proceedings that exceed a court’s jurisdiction.⁷⁵

In *State v. Eighth Jud. Dist. Ct. (Logan D.)*, this Court considered the merits of a petition for writ of mandamus or prohibition where it had decided that no plain, speedy, and adequate remedy was available to the petitioner, who raised “important legal issues potentially affecting all persons who have been adjudicated delinquent for certain sex offenses since 1956.”⁷⁶ This Court found that there was no other remedy at law because this Court had previously ruled that the juvenile court order challenged by the petitioner was not appealable.⁷⁷ Specifically, this Court dismissed the State’s appeal referred to by *Logan D.* because “the challenged order did not constitute a final judgment⁷⁸ or a special order entered after final judgment”⁷⁹ from which this Court would have jurisdiction to hear an appeal.⁸⁰

In *Cote H. v. Eighth Judicial Dist. Court ex rel. County of Clark*, this Court decided to consider a petition for writ of mandamus or prohibition even though it appeared that an appeal was available from a juvenile delinquency adjudication because the case involved an important question of law that needed clarification.⁸¹

⁷⁴ *Cote H.*, 124 Nev. at 39–40. A writ of mandamus is also available “to control an arbitrary or capricious exercise of discretion.” *Logan D.*, 306 P.3d at 373 (citing *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603–04 (1981)).

⁷⁵ *Logan D.*, 306 P.3d at 373 (citing NRS 34.320).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ See NRS 62D.500; NRAP 3A(b)(1).

⁷⁹ See NRS 62D.500; NRAP 3A(b)(2).

⁸⁰ *In re Louis A.*, 124 Nev. 1476 (2008) (dismissing the appeal).

⁸¹ *Cote H.*, 124 Nev. at 39–40.

The case involved a statutory interpretation issue of first impression, namely: the meaning of the term “person” as used in NRS 201.230(1), which would determine whether that statute allowed for juvenile delinquency adjudications of children under 14 (including the petitioner).⁸² This Court recognized that the issue was important and would arise with some frequency, so the “interests of sound judicial economy and administration” favored the consideration of the petition.⁸³

Here, the juvenile court had a duty under AB 153 to refrain from adjudicating A.J. as a “delinquent” for petition 1 because she was, in fact, the victim of sexual exploitation and trafficking, and because that petition alleged that A.J. engaged in solicitation or prostitution by incorporation of “LVMPD Event #: 150711-0578.” Further, the juvenile court had a duty to refrain from ordering A.J. on formal probation, and as a result, her subsequent violations of probation and commitment to a state correctional facility. These orders violated AB 153, so her present confinement constitutes an illegal seizure under the Nevada and United States Constitutions.

The juvenile court retains jurisdiction over A.J.’s case until the termination of her case upon petition of the court.⁸⁴ The problem-solving, informal atmosphere of the juvenile court gives it the power to “*at any time* modify or terminate any decree or order that it has made,”⁸⁵ as the juvenile court’s central focus must be on

⁸² *Id.* at 40–41.

⁸³ *Id.* at 39–40.

⁸⁴ *Id.*

⁸⁵ Nev. Rev. Stat. § 62E.020 (2015). (emphasis added).

the best interests of the children before it. Before termination of the juvenile court's jurisdiction over A.J.'s case—which has not yet occurred—it is at best unclear whether there are any “final orders” in this case from which she may directly appeal, because the juvenile court here decided to retain jurisdiction of the case in order to modify terms of parole upon A.J.'s release.⁸⁶

Therefore, there is not a “plain, speedy and adequate” remedy by which A.J. may obtain relief from her present confinement at Caliente Youth Center, for which she pleas from this Court. The juvenile court's continuing jurisdiction over A.J.'s case entitles her to have the court now correct its orders that are unlawful under AB 153, and to order for her the protections prescribed for sex-trafficked children by AB 153.⁸⁷ Therefore, this writ should issue in order to compel the juvenile court to enforce AB 153 and to provide needed guidance to all the Nevada juvenile courts regarding this law.

Even if this Court determines that a plain, speedy, and adequate remedy is available here in the form of a direct appeal,⁸⁸ consideration of the petition is nonetheless appropriate and available here for the same reasons as in *Cote H.*⁸⁹ This is an important and urgent issue that requires the immediate attention of this Court. This petition centers around a substantive legal issue of first impression,

⁸⁶ See Ex. D. at 025 (Minutes of the Formal Report & Disposition hearing).

⁸⁷ Nev. Rev. Stat. § 34.170 (2015).

⁸⁸ See *Cote H.*, 124 Nev. at 39 (deciding to consider the petition the decision that “[i]n this case . . . Cote appears to have a plain, speedy, and adequate in the form of an appeal from any judgment adjudicating him a delinquent.”).

⁸⁹ See *id.* at 39–40.

affecting the way that our courts will treat the many sex-trafficked children throughout Nevada,⁹⁰ and it is a matter of the highest public importance.⁹¹

The question of how juvenile courts should treat sex-trafficked children occurs with striking regularity, particularly in Nevada.⁹² Child sex trafficking is an enormous problem in Las Vegas and throughout Nevada.⁹³ The FBI listed Las Vegas as a top thirteen city for high intensity child prostitution.⁹⁴ Therefore,

Nevada courts are repeatedly and disproportionately forced to address this issue:

The number of suspected domestic minors in sex trafficking in Las Vegas, Nevada was 5,122 – the highest estimate among all cities researched. The next highest estimates were 227 minors in Kansas City, Missouri and 150 in Dallas, Texas. Notably, between 1994 and 2007, almost 1,500 minors appeared before a Las Vegas judge for prostitution-related charges⁹⁵

Without review of this petition, sexually exploited children will continue to be adjudicated delinquent week after week, child after child, instead of receiving supervision under a consent decree as directed under AB 153, unless, but not until, the issue makes its way back to this Court. But this Court could resolve this issue

⁹⁰ *Id.*

⁹¹ Federal law labels the inducement of a child into an act of commercial sex a “severe form of trafficking in persons.” Trafficking Victims Protection Act, 22 U.S.C. § 7102(9)(A) (2012).

⁹² *Cote H.*, 124 Nev. at 40.

⁹³ *See* Forrey, 14 Nev. L.J. at 970–71 & n.5.

⁹⁴ *Id.* at 971 (citing *The Federal Bureau of Investigation’s Efforts to Combat Crimes Against Children*, Office of Inspector Gen., U.S. Dep’t of Justice, Audit Rep. 09-08, 70 n.122 (2009), <http://www.justice.gov/oig/reports/FBI/a0908/final.pdf>).

⁹⁵ *Id.* at 973 (citing Alison Siskin & Liana Sun Wyler, *Trafficking in Persons: U.S. Policy and Issues for Congress*, Cong. Research Serv., 8 (2013) <http://www.fas.org/sgp/crs/row/RL34317.pdf>; M. Alexis Kennedy & Nicole Joey Pucci, *Domestic Minor Sex Trafficking: L.V., Nev.*, Shared Hope Int’l, 2-3 (2008)).

now for a motivated litigant who seeks relief from her present unlawful detention, and seeks vindication from this Court of her status as a victim.

A.J. hopes that she may obtain relief by this extraordinary writ petition before her completion of her term of commitment at the Caliente Youth Center. However, even if this procedure will extend beyond that time, she asks this Court to nonetheless resolve this issue because (1) it is not moot, as a favorable decision would effectively expunge her juvenile delinquency record and would vindicate her right to be recognized as a victim, rather than delinquent, and (2) this Court may provide urgently needed direction to the juvenile courts for addressing other children in her situation—an issue that frequently arises.

In the alternative, if this Court declines to address the petition and holds that a direct appeal is, in fact, available to her at this time, A.J. requests that this petition be considered as a notice of appeal and opening brief, proceeding forward with this case as a direct appeal, if possible. But A.J. maintains her position that this writ petition remains the best mechanism by which A.J. and the many sex-trafficked children who are now or will shortly be before juvenile courts in Nevada may obtain relief, and this Court can proceed directly to the merits of her claim. For now, sex-trafficked children will suffer irreparable harm from the continuing practice of wrongful delinquency adjudications and incarceration until this Court steps in, provides relief, and clarifies the law.

Conclusion

AB 153 applies to A.J. as much as any child. A.J. is an isolated foster child with no home and no family. She has been sexually assaulted and exploited since she was 8 years old. Law enforcement first arrested and detained A.J. for engaging in prostitution. The State filed a petition alleging prostitution or solicitation because it expressly incorporated "LVMPD Event #: 150711-0578," which alleged "Engaging in Prostitution/Loitering Prostitution" as the arresting offenses, and because the facts known to all parties at the time the petition was filed made "prostitution" or "solicitation" the commonsense underlying facts.

Therefore, AB 153 requires the juvenile court to place A.J. under court supervision pursuant to a consent decree, without a formal adjudication of delinquency, and order A.J. services for the victims of sexual assault. To accomplish this, the juvenile court must vacate its unlawful orders. A.J. has served over four months in custody for being the victim of sex trafficking. She has been punished enough.

(1) A.J. respectfully petitions this Honorable Court to issue a writ of mandamus or prohibition pursuant to NRAP 21 and NRS 34.160, to direct the juvenile court, to vacate its unlawful orders adjudicating A.J. delinquent on petitions 1, 2, and 4. In place of these orders, A.J. petitions this Court to direct the juvenile court to order court supervision pursuant to a consent decree under

Nevada's recently passed law, AB 153, and to order the services specified for sexually exploited children provided in that law.

(2) A.J. requests this Court to direct the juvenile court to order the Nevada Department of Health and Human Services, Division of Child and Family Services, Youth Parole Bureau to release A.J. from confinement at the Caliente Youth Center and to return her directly to the custody of DFS in foster care, placing her on an electronic monitoring device for her own protection and safety. A.J. further petitions this Court to direct the juvenile court to place A.J. in a temporary placement for children in protective custody under NRS 432B.390 § 6, rather than a detention facility,⁹⁶ until DFS moves her to another suitable placement.

Finally, (3) A.J. requests this Court to direct the juvenile court to order DFS, A.J.'s legal guardian, over whom the juvenile court has jurisdiction,⁹⁷ to find A.J. a safe, healthy, stable, and comfortable long-term placement pursuant to NRS 432.530 § 1, other than a detention facility in violation of NRS 432.525 § 9,⁹⁸ within 14 calendar days.

⁹⁶ If the juvenile court has no legitimate basis upon which to detain A.J. besides DFS's inaction or failure to find A.J. another placement, the court should not resort to indefinite confinement in the juvenile detention facility because this would violate A.J.'s rights as a foster child under Nev. Rev. Stat. 432.525 § 9 and constitute an illegal seizure under Nev. Const. art. I, § 18. The more appropriate and equitable course is to treat her as a child in protective custody and find her a temporary placement under the guidance of Nev. Rev. Stat. 432B.390 § 6, until DFS finds her a home.

⁹⁷ Nev. Rev. Stat. § 62A.380 (2015); Nev. Rev. Stat. 62B.350 § 1 (2015).

⁹⁸ Nev. Rev. Stat. 432.530 § 1, 432.525 § 9 (2015) (DFS should now be given advance directive that a juvenile detention facility is not a suitable placement for a foster child).

RESPECTFULLY SUBMITTED this 8th day of April, 2016.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

/s/ S. A. Spelman

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DECLARATION

STEPHEN ALEXANDER SPELMAN makes the following declaration:

1. I am a student attorney practicing under Supreme Court Rule 49.5 in the Thomas & Mack Legal Clinic at the William S. Boyd School of Law, University of Nevada, Las Vegas. I am supervised by Chief Deputy Public Defender Susan Roske and Professor Mary Berkheiser. I represent Subject Minor A.J. for the present proceedings.

2. I verify that the facts within the petition for a writ of mandamus or prohibition is true and correct to the best of my knowledge and understanding (NRAP 21(a)(5)).

3. It is my understanding that the Juvenile Division of the Eighth Judicial District Court does not, as a rule, draft transcripts of its hearings unless the production of a transcript is specifically ordered by the court. The district court has granted the Clark County Juvenile Public Defender's office's March 25, 2016 ex parte request for an order for a typewritten transcript of the March 15, 2016 motion hearing in Department 18, but this transcript will take time to produce. (NRAP 21(a)(4)). During the pendency of the transcript's production by the juvenile court, the juvenile court may provide a CD with a video recording of the hearing.

4. I was lead counsel for the March 15, 2016 motion hearing and I have also reviewed the video recording of this hearing. I verify that my citations to the contents of this hearing are based on the true and correct content of this hearing to the best of my knowledge and understanding, limited by my ability to interpret the hearing through a digital video format.

5. I have been informed and believe that Petitioner/Subject-Minor A.J. was transported to Caliente Youth Center on or about Thursday, February 25, 2016.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 7th day of April, 2016.

/s/ S. A. Spelman
S. Alex Spelman, Student Attorney, SCR 49.

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 8th day of April, 2016. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT
STEVEN B. WOLFSON
JOHN VAN BOKERUC

Susan Roske
Howard S. Bolder

I further certify that I served a copy of this document by mailing a true and correct

copy thereof, postage pre-paid, addressed to:

Honorable William O. Voy
District Court, Juvenile Division
Department 18
601 N. Pecos
Las Vegas, NV 89101

BY

Employee, Clark County Public
Defender's Office