

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRAVIS BISH,

Appellant,

vs.

THE JUSTICE COURT FOR SPARKS  
TOWNSHIP, THE HON. JESSICA  
LONGLEY, BY AND THROUGH  
REAL PARTY IN INTEREST THE  
STATE OF NEVADA,

Respondent.

Electronically Filed  
No. 82295 May 10 2021 03:15 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**Appeal from Order Denying Petition for Writ of Mandamus  
Case No. CR20-2911  
The Second Judicial District Court of the State of Nevada  
The Honorable Scott N. Freeman, District Judge**

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**JOINT APPENDIX**

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DA #20-10610

SPD 20-006129

IN THE JUSTICE COURT OF SPARKS TOWNSHIP

IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

\* \* \*

THE STATE OF NEVADA,

Plaintiff,

20-SCR-01369

Case No.: RCR2020-

v.

Dept. No.: 2

TRAVIS BISH,

Defendant.

CRIMINAL COMPLAINT

BRITTANY K. BISHOP of the County of Washoe, State of Nevada, verifies and declares upon information and belief and under penalty of perjury, that TRAVIS BISH, the defendant above-named, has committed the crime of:

COUNT I. SEXUAL ASSAULT AGAINST CHILD UNDER THE AGE OF 14 YEARS, a violation of NRS 200.366, a category A felony, (50105) in the manner following, to wit:

That the said defendant, TRAVIS BISH, on or about August 22, 2020, at or about 1475 Vista Del Rancho Drive, Apt #266, within the County of Washoe, State of Nevada, did willfully and unlawfully subject A.I., a female child under the age of 14 years, to sexual penetration, to wit, the said defendant placed his finger(s) inside the child victim's vagina.

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///

1                    AFFIRMATION PURSUANT TO NRS 239B.030

2                    The undersigned does hereby affirm that the preceding  
3 document does not contain the social security number of any person.

4  
5                    DATED this 15th day of September, 2020.

6  
7  
8                    Brittany Bishop

9                    BRITTANY K. BISHOP  
10                   NBN 13745  
11                   DEPUTY DISTRICT ATTORNEY

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23                   PCN: SPPD0063649C-BISH

24                   Custody: X

25                   Bailed:

26                   Warrant:

                    District Attorney Assigned: BISHOP|13745

                    District Court #: CR20-2911|BISH

                    District Court Dept: D09

                    Defense Attorney:

                    Restitution:

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Defendant.

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A P P E A R A N C E S

FOR THE PLAINTIFF:  
Brittany Bishop, Esq.

FOR THE DEFENDANT:  
KEVIN ADLER, ESQ.

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SPARKS, NEVADA, SEPTEMBER 18, 2020, 9:00 A.M.

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THE COURT: It looks like the last one we have is State of Nevada versus Travis Bish. Mr. Adler, are you going to be handling that?

12:12PM

MR. ADLER: Yes, your Honor, I'll be handling it this morning.

THE COURT: All right.

12:12PM

MS. BISHOP: Brittany Bishop on behalf of the State.

THE COURT: All right.

We do have a couple of people in the waiting room I believe that we were bringing over. Ms. Iacovelli and did you still have the detective?

12:13PM

MS. BISHOP: I just actually messaged him and asked him to log in. It's his day off so I didn't want him waiting on us for too long. So he should be in at any second. There he is.

12:13PM

THE COURT: All right.

So Ms. Bishop, go ahead.

MS. BISHOP: Thanks, your Honor.

Okay. So right now, the defendant's bail is

1 set at \$30,000 bondable which for all intense and  
2 purposes, means that after the Category A felony that  
3 he's charged with committing, he can bail out on about  
4 \$4,500 bucks. The State contends that this is much  
5 too low, what we consider a danger to the community  
6 and a risk of flight here. He's looking at 35 years  
7 to life in prison for the charges or for the charge  
8 that he's facing which is sexually assaulting his  
9 nine-year old adopted daughter.

12:14PM

10 The State would assert that he's not only a  
11 danger to that victim, as the State is alleging that  
12 he did commit that crime, but any person similarly  
13 situated to that victim. It's an extremely grotesque  
14 act that he is being alleged to have been committed  
15 against him.

12:14PM

16 With regards to his risk of flight, the  
17 nature of the charges I mentioned. He does have  
18 family in the community, however, I'm sure he doesn't  
19 want others in the community aware of what he's been  
20 charged with and that's kind of why these even get  
21 trailed to the end of the calendar because even in  
22 jail, people who commit crimes of this nature, don't  
23 want others to know that they're being charged with  
24 these crimes.

12:15PM

12:15PM



1           Additionally as I mentioned before, he's  
2 looking at a life sentence. So 35 years to life in  
3 prison which gives him an impetus not to return to  
4 court. I'm informed and believe that he is employed  
5 at Tesla. I'm not aware of where he would be residing 12:16PM  
6 if he were to secure some sort of release but based on  
7 what we know at this time and the nature of the  
8 charges, the State is asking for an increase to  
9 \$150,000 bail.

10           THE COURT: Are you going to elicit system 12:16PM  
11 from the detective or Ms. Iacovelli?

12           THE WITNESS: Johnson.

13           THE COURT: Ms. Johnson, that's your name?

14           THE WITNESS: Yes.

15           THE COURT: All right. 12:17PM

16 BY MS. BISHOP:

17           Q     Ms. Johnson, is there anything you would like  
18 the court to know with regards to what we're talking  
19 about this morning which would be the defendant's  
20 bail? 12:17PM

21           THE COURT: Hold on. If she's going to I  
22 need to swear her in first I'm just asking --

23           MS. BISHOP: I apologize, your Honor, I  
24 jumped the gun there.

1 THE COURT: That's okay.

2 Ms. Johnson, please raise your right hand.

3 (The witness was sworn.)

4 THE COURT: All right.

5 And just for your knowledge because you're  
6 not familiar with this if you see me looking over to  
7 the side, it's because my TV screen that you're on is  
8 over at the side of my courtroom and the cameras are  
9 at the front. So I am listening, I'm paying attention  
10 and I'm watching you I just you don't get to see this  
11 everyday. I just wanted to let you know that that's  
12 what's happening.

12:17PM

12:17PM

13 MS. JOHNSON: Okay.

14 THE COURT: All right. Go ahead.

15 BY MS. BISHOP:

16 Q And actually, Ms. Johnson, I'll narrow the  
17 focus a little bit and not leave you just kind of  
18 wondering what we're looking for because that kind of  
19 puts you in a difficult spot.

12:18PM

20 Ms. Johnson, do you know the defendant,  
21 Travis Bish?

12:18PM

22 A Yes.

23 Q How do you know him, ma'am?

24 A He's my husband.

1 Q Okay.

2 And you have a daughter; correct?

3 A Yes, I have two daughters, one son.

4 Q Okay.

5 And the daughter who I'm speaking about is  
6 the alleged victim in this case and her initials are A  
7 I?

12:18PM

8 A Yes.

9 Q Okay. Can you tell us a little bit how the  
10 allegations with regards to A I and the defendant have  
11 had an affect on you and your daughter?

12:18PM

12 A I'll start with my daughter. She's been  
13 having a lot of what I refer to as toddler tantrums  
14 lately, kicking, screaming, not even when things don't  
15 go her way, just over things that she might think she  
16 did wrong when she didn't. She was never told she  
17 did.

12:19PM

18 If she doesn't get words of affirmation after  
19 you gave someone else words of affirmation, she gets  
20 really upset. She hasn't acted in this way in a while  
21 since her biological father gave up his rights. It's  
22 like starting over again with her because we had got  
23 her to the point where she wasn't doing this anymore  
24 and she was able to cope a little bit better with her

12:19PM

1 emotions and just like --

2 Q So you've seen this behavior since these  
3 allegations and this investigation has started?

4 A Yes.

5 Q And that's been kind of for the worse, for  
6 the negative?

7 A Yes, it has.

8 Q Okay.

9 And what sort of affect has this had on you,  
10 Ms. Johnson?

11 A I am financially struggling a lot more now.  
12 You know, I'm here in Ely working 64 hours of overtime  
13 just to pay bills because I can't -- not that I can't  
14 afford to live, but I can't afford to live without  
15 working overtime.

16 Q Prior to these allegations coming forward, is  
17 it true that the defendant was helping with childcare  
18 of your three children while you worked?

19 A Yeah. He was the primary caregiver while I  
20 was working.

21 Q And the allegations, as you know them, are  
22 that while you were working is when the incident  
23 occurred while he was watching the children?

24 A Correct.

12:20PM

12:20PM

12:21PM

12:21PM

1 Q Okay. And you mentioned you have three  
2 children. Only one of them is the defendant's  
3 biological child?

4 A Yes.

5 Q And that's not the victim in this case?

12:21PM

6 A No.

7 Q Okay.

8 Is there anything else you would like the  
9 court to know with regards to bail?

10 A Can you be a little more specific?

12:21PM

11 Q What would you like to see happen?

12 A What you said sounds fair. I think a\$30,000  
13 bail really isn't that much for the nature of what's

14 happened. I'm in the process of getting a T P O

15 against him because they said if he does end up

12:22PM

16 getting out today, then he would still be able to have

17 contact with my younger two children, just not with me

18 and my oldest. So it would worry me if he would be

19 able to get out.

20 Q And your youngest is a female child; is that  
21 correct?

12:22PM

22 A That's correct.

23 Q As is the victim in this case?

24 A Yes.

1 Q And how old is your youngest, ma'am?

2 A She's four.

3 Q I do want to ask you one more question.

4 So we spoke briefly about attending this  
5 proceeding today and you mentioned that you had been  
6 receiving some text messages prior to -- so after  
7 these allegations came forward but prior to the  
8 defendant's arrest; is that correct?

12:23PM

9 A Yes.

10 Q And those were to include text messages from  
11 the defendant's mother?

12:23PM

12 A Right.

13 Q Okay. Do you want those communications to  
14 continue, ma'am?

15 A Not at this time, no.

12:23PM

16 Q Okay.

17 Anything else that you would like for the  
18 court to know, ma'am?

19 A Honestly, this has had a major affect on more  
20 than just us. You know, it's having an affect on my  
21 family because now I'm relying on them solely to help  
22 me out with my kids when I'm at work. My friends,  
23 everyone I know has basically put their lives on hold  
24 to help me out with this. It's had a major impact on

12:23PM

1 more than just the people directly involved.

2 I always told Travis -- I'm sorry, I'm  
3 getting another call, that his actions affect other  
4 people and I really don't think he's ever taken it  
5 seriously and you know, this time it's more than just 12:24PM  
6 that. It's like he really, really wasn't really  
7 thinking about anybody but himself and how it effects  
8 everyone around him. It's affecting even his family,  
9 you know. His parents have a no communication with  
10 the kids. 12:24PM

11 Yeah, I'm sorry, I'm getting a little  
12 emotional but --

13 Q No need for apologies, ma'am.

14 A Yeah.

15 THE COURT: Ms. Bishop, before Mr. Adler 12:25PM  
16 questions Ms. Johnson, I have a few questions.

17 MS. BISHOP: Absolutely.

18 THE COURT: I believe I read in the P C sheet  
19 that you had already been separated from Mr. Bish?

20 THE WITNESS: Yes. 12:25PM

21 THE COURT: Have you already started divorce  
22 proceedings?

23 THE WITNESS: I have not, I was waiting for  
24 the courthouses to open back up but I recently found

1 out that I can do it online and possibly get the  
2 filing fee waived. So I'm going to be looking into  
3 that as soon as I get back into Reno.

4 THE COURT: The reason I was asking is I was  
5 just trying to -- I'm trying to figure out financially 12:26PM  
6 if there was going to be any sort of settlement going  
7 his way or your way because I needed to ask do you own  
8 a house together? Does he own a house, what property.  
9 I'm trying to find out -- I have to consider financial  
10 resources and between you and him, I believe I'll be 12:26PM  
11 able to get a good picture of that today.

12 THE WITNESS: The only thing we have is a  
13 vehicle that is currently broken down. So it's  
14 inoperable now and that's really the only debt that I  
15 can think of off the top of my head that we have 12:26PM  
16 together.

17 THE COURT: Well, what about assets, I mean  
18 do you own a house?

19 THE WITNESS: No.

20 THE COURT: Okay. You said his family is 12:26PM  
21 involved. And I'm going to tell you I have no  
22 authority to tell his family not to contact you. I  
23 can tell him that if he's trying to send messages, he  
24 can get in trouble for that.



1           So if there are messages that are being sent  
2 from him, he cannot do that and I'm going to tell you  
3 right now Mr. Bish, you don't get to do that, but I  
4 have no authority over his mother. But if they are  
5 threatening or harassing, you can always apply for a  
6 restraining order as well.

12:27PM

7           THE WITNESS: Okay.

8           THE COURT: How old are your children, all  
9 three of them?

10          THE WITNESS: We have a nine, seven and a  
11 four-year old.

12:27PM

12          THE COURT: Okay. And regardless of what  
13 bail is set or custody status today, the No Contact  
14 order will include all children under the age of 18,  
15 that includes his own children, unless the family  
16 court gets involved but that's I think further down  
17 the road.

12:28PM

18          THE WITNESS: All right.

19          THE COURT: So Mr. Bish, that will be an  
20 order regardless of what bail is set today or custody  
21 determined, you're to have no contact with anybody  
22 under the age of 18.

12:28PM

23          THE DEFENDANT: Okay.

24          THE COURT: All right.

1 Miss Johnson, anything else you want to tell  
2 me before I allow Mr. Adler to ask you questions?

3 THE WITNESS: No, not at the moment.

4 THE COURT: All right. Mr. Adler?

5 BY MR. ADLER:

12:28PM

6 Q Thank you, your Honor.

7 Good morning, Ms. Johnson. I'm just going to  
8 ask a couple of things to clarify. How old -- I'm  
9 just going to call her by her initials. How old is A  
10 I right now?

12:28PM

11 A She's nine.

12 Q And how old was she when you and Mr. Bish  
13 adopted her?

14 THE COURT: Mr. Adler, this is for purposes  
15 of bail, and I'm not quite sure that question what the  
16 relevancy is.

12:29PM

17 MR. ADLER: Your Honor, if I could just have  
18 a couple of questions. It's relevant to the testimony  
19 that -- she just talked about this. She brought up  
20 specifically how the way that the daughter was acting  
21 now is very much like the way she was acting when her  
22 bio father gave up his rights when they first adopted  
23 her. I just wanted to explore that.

12:29PM

24 MS. BISHOP: It's mom's biological daughter.

1 MR. ADLER: I apologize, I must have misread  
2 the police report.

3 BY MR. ADLER:

4 Q So this is your biological daughter, Ms.  
5 Johnson?

12:30PM

6 A Yes, she is my biological daughter. He  
7 adopted her.

8 Q So it's your biological daughter but Mr. Bish  
9 adopted her?

10 A Yes.

12:30PM

11 Q When did her biological father give up his  
12 rights?

13 MS. BISHOP: Objection relevance.

14 THE COURT: And Mr. Adler, I've already  
15 stated I don't understand what the relevance is.

12:30PM

16 MR. ADLER: I'm sorry, I didn't hear a ruling  
17 on that before and your Honor, the relevance is that  
18 she stated on direct examination that when the  
19 biological father gave up his rights, she was acting  
20 very similarly to the way that she's acting now and I  
21 just want to explore that with a couple of questions.

12:31PM

22 THE COURT: Well, I don't know that when the  
23 father gave up rights actually matters. It was -- she  
24 was explaining what the behavior. If you want to ask

1 questions about the behaviors that are being exhibited  
2 currently, that's fine but when her biological father  
3 left her life is not relevant to the bail hearing.

4 MR. ADLER: Okay.

5 BY MR. ADLER:

12:31PM

6 Q Ms. Johnson, what kind of behaviors was she  
7 exhibiting when her biological father gave up his  
8 rights?

9 A The same I explained that she's exhibiting  
10 now full-on meltdown, screaming, rolling around. Like  
11 I said, like a tantrum you might see a two-year old  
12 having.

12:32PM

13 Q Okay.

14 Was she two at the time?

15 A No. She was older than two at the time.

12:32PM

16 Q And when he gave up those rights, did that  
17 include giving up visitation rights with her?

18 MS. BISHOP: Objection relevance.

19 MR. ADLER: Your Honor, she said he gave up  
20 his rights, I'm exploring what that means.

12:32PM

21 THE COURT: Well, Mr. Adler, what does that  
22 have to do with the custody status of Mr. Bish?

23 MR. ADLER: Your Honor, this was part of the  
24 testimony on direct. I'm absolutely entitled to

1 cross-examine her about it.

2 THE COURT: If it is not relevant to the  
3 custody status, we are not going into a full-fledged  
4 cross-examination hearing this morning, Mr. Adler. We  
5 have 15 minutes before Reno Justice Court needs the  
6 room. What relevance does it have to custody?

12:33PM

7 MR. ADLER: Your Honor, it was brought up on  
8 direct. If it wasn't relevant, it didn't need to be  
9 brought up at that point either but it's on the record  
10 now.

12:33PM

11 THE COURT: Mr. Adler, arguing with counsel  
12 or arguing with the judge is not the best course of  
13 action to go right now.

14 I asked you a question, what is the relevance  
15 of your question about the biological father have to  
16 do with Mr. Bish's custody?

12:33PM

17 MR. ADLER: Your Honor, the relevance I think  
18 is pretty clear. She's testified that when these  
19 events happened, when Mr. Bish was arrested, the  
20 daughter exhibited very similar behavior to when her  
21 daughter's father lost his rights. The reason that  
22 matters is because this could easily be explainable by  
23 the separation between her and her original father and  
24 her and her current father. That's why it's relevant.

12:34PM

1 THE COURT: Well, you can argue that, sir.  
2 Mr. Adler, that's an argument.

3 MR. ADLER: It's relevant.

4 THE COURT: Mr. Adler, that is an argument  
5 and yes, that could be relevant with regards to the  
6 argument but asking the age, asking about the  
7 visitation with the prior father, that has nothing to  
8 do with Mr. Bish's custody status today.

12:34PM

9 So I'm going to have you move on from that  
10 question. I've already taken that as argument so you  
11 don't need to argue that again. Move on from that  
12 question, please. I don't find the line of  
13 questioning you were doing as relevant today.

12:35PM

14 MR. ADLER: Thank you, your Honor.

15 No further questions for the witness.

12:35PM

16 THE COURT: All right.

17 Ms. Bishop, did you need the detective to  
18 tell me anything today?

19 MS. BISHOP: No. I always like to have him  
20 just in case I get pressed but I don't have anybody  
21 here to testify to the things that I just addressed  
22 with your Honor.

12:35PM

23 THE COURT: All right.

24 Mr. Adler, what would you like to argue?

1 MR. ADLER: Yes, your Honor.

2 Mr. Bishop's scores a four on the Risk  
3 Assessment. He's very low risk. Pretrial was able to  
4 verify his employment. As Ms. Johnson mentioned, he  
5 has a job with Tesla. He also has the ability to live 12:36PM  
6 with his mother. I was able to speak with him  
7 yesterday. We were able to set up kind of an  
8 emergency I-WEB at the last minute. So I did talk to  
9 him a little. So he has a place to live. It's not  
10 going to be with the alleged victim in this case or 12:36PM  
11 with Ms. Johnson or her family. He's lived in Reno  
12 for about five years he states. So he has a  
13 residence. He has family and he's got a job.

14 As to the allegations in this case, I  
15 recognize that they're very serious. These are 12:36PM  
16 Category A charges. No one is disputing that.  
17 However, the bail that the State is asking for is  
18 clearly excessive. He's in jail right now on \$30,000  
19 bail. He can't afford that, because he's still in  
20 custody. He told the office he can't really afford 12:37PM  
21 anything.

22 As Ms. Johnson mentioned when they were  
23 together or at least recently, they had been going  
24 through a separation but Mr. Bish was still staying at

1 her home taking care of her kids. That suggests that  
2 he had the time to do that. He doesn't have a lot of  
3 income.

4 Ms. Johnson seems to be -- she was working  
5 quite a few hours while all this was going on. As I 12:37PM  
6 noted earlier for argument what her daughter is going  
7 through right now is very similar to when her bio  
8 father separated. Those actions could easily be  
9 explained by just the separation from Mr. Bish, her  
10 adopted father. 12:38PM

11 The only other way that Ms. Johnson said that  
12 this is impacting her life is the financial struggle  
13 because as she knows, the defendant is not available  
14 to help with childcare and I realize that wouldn't be  
15 the case even if he's released because the court, of 12:38PM  
16 course, will have a No Contact order.

17 Mr. Bish can't afford any amount of bail.  
18 We're asking for a release on his own recognizance. I  
19 think that there are other conditions the court can  
20 set to ensure the safety of the community and to 12:39PM  
21 ensure that he returns to court.

22 Ms. Bishop suggests that there's danger to  
23 other victims like the alleged victim here, however he  
24 has no history of any conduct like this. Mr. Bish is



1 31 with almost no criminal record. I don't think  
2 there's any evidence that he would be a threat to  
3 anybody. The only person that -- inaudible -- is the  
4 alleged victim. Again, the No Contact order, G P S  
5 monitoring if the court deems it necessary, maybe even 12:39PM  
6 house arrest could guarantee both that he's not going  
7 to flee and that he has no contact with the alleged  
8 victim in this case. With that, we'll submit.

9 THE COURT: Okay. I do have a couple of  
10 questions. 12:39PM

11 You said that he would live with his mother,  
12 where does his mother reside; is that here locally  
13 because you said he was only here for five years so  
14 where would that be?

15 MR. ADLER: I believe that's here in Reno. I 12:40PM  
16 don't have that address.

17 MS. BISHOP: Yes, it is here in Reno.

18 THE COURT: And there was allegations of  
19 prior criminal history. I'm looking and it looks like  
20 his first arrest was at the age of 18, so 13 years 12:40PM  
21 ago; is there a criminal -- Ms. Bishop, I didn't hear  
22 anything, is there a criminal history?

23 MS. BISHOP: If you'll give me just one  
24 minute, your Honor, I can pull it up for us. Sorry I

1 only have my Surface Pro during this pandemic.

2 Let's see here, looks like it's out of  
3 Colorado, a 2007 looks like it's called public peace.  
4 I'm assuming that's a disturbing the peace and a  
5 contempt of court.

12:41PM

6 In 2013, he was arrested for assault causing  
7 serious bodily injury, assault, felony menacing with a  
8 real simulated weapon. I'm not sure what that means.  
9 It's in Colorado language and disorderly conduct,  
10 fighting. That's what I'm seeing, your Honor.

12:41PM

11 MR. ADLER: And, your Honor, to clarify, the  
12 first of those assault charges were dismissed by the D  
13 A according to the NCIC. The second one was deferred  
14 and dismissed.

15 THE COURT: Mr. Bish, does your mother own  
16 her house?

12:42PM

17 THE DEFENDANT: No.

18 MS. JOHNSON: Your Honor, the mother we're  
19 speaking of also I just wanted to remind the court, is  
20 the one that was sending the unwanted text messages to  
21 Ms. Johnson. I just wanted to make that clear for the  
22 record.

12:42PM

23 THE COURT: At this time, I don't believe  
24 that \$150,000 bail is necessary. I think that would

1 be excessive in this case due to his low risk of  
2 flight, his low risk of -- or his low criminal history  
3 and the financial resources. The State did make the  
4 argument that he would only have to come up with  
5 \$4,500 cash, but he would also have to come up with an  
6 additional \$30,000 in collateral.

12:43PM

7           Hearing a little bit more about Mr. Bish's  
8 circumstances, he is employed. He does have family  
9 here, I do believe that a lower bail than \$150,000 is  
10 necessary. However, I am still concerned because  
11 while it appears that there's a very low risk of  
12 flight, there is still that risk of flight due to the  
13 nature of the charges. If convicted, it's a mandatory  
14 prison offense with a minimum of 35 years and a  
15 maximum of lifetime in prison.

12:43PM

12:43PM

16           I am going to raise the bail to \$50,000  
17 bondable. There is no contact with anybody under the  
18 age of 18. If he resides with his mother, your mother  
19 needs to stop contacting her. I have no jurisdiction  
20 -- I will take it that if your mother texts Ms.  
21 Johnson if you're living at your mother's house, if  
22 you bail out and you're living at your mother's house,  
23 I'm going to take it that if your mother texts Ms.  
24 Johnson, that it's a communication from you. I will

12:44PM

1 have no other choice but to assume that.

2 THE DEFENDANT: Okay. I will let her know.

3 THE COURT: If you have -- if Ms. Johnson or  
4 anybody else files for a restraining order against  
5 you, you also need to obey all the laws and  
6 restraining order for court guidelines.

12:44PM

7 THE DEFENDANT: Okay, yes.

8 THE COURT: Looks like we already have a  
9 mandatory status conference, enhanced supervision as  
10 well.

12:45PM

11 THE DEFENDANT: Okay.

12 THE COURT: I'm not ordering G P S because  
13 it's actually been proven that it has no effect and  
14 it's just an extra financial burden but I do reserve  
15 the right to add other conditions, if I feel it  
16 necessary along the way, sir.

12:45PM

17 MS. BISHOP: Your Honor, you mentioned  
18 earlier no contact with anyone under the age of 18; is  
19 that still applicable?

20 THE COURT: Yes. I restated that, yes.

12:45PM

21 Is there anybody under the age of 18 living  
22 in your mother's household?

23 THE DEFENDANT: No.

24 THE COURT: All right.

1           Then we have the mandatory status conference  
2 on September 23rd. Ms. Bishop, I don't know it looks  
3 like Mr. Slocum is the assigned attorney. Have you  
4 spoken with him; do we need to keep that date or do we  
5 need to move it out?

12:46PM

6           MS. BISHOP: I'm going to assume he's going  
7 to want to review discovery. We should probably push  
8 it out a little bit.

9           THE COURT: Mr. Adler, have you had any  
10 communication with him?

12:46PM

11           MR. ADLER: Mr. Slocum has not indicated one  
12 way or the other what he wants to do about that  
13 hearing.

14           THE COURT: All right.

15           We'll just leave it on for the 23rd just to  
16 make sure that Mr. Slocum gets notification of the  
17 case and can starting working on it. Then obviously  
18 you can e-mail us to just continue it out.

12:46PM

19           All right. Good luck to you.

20           MS. BISHOP: Sounds good. I appreciate it.  
21 Thank you.

12:46PM

22  
23           (The proceedings were concluded.)  
24

1 STATE OF NEVADA )  
2 )SS.  
3 COUNTY OF WASHOE )  
4  
5

6 I, GAIL R. WILLSEY, do hereby certify:  
7 That I was provided a JAVS CD and that said  
8 CD was transcribed by me, a Certified Shorthand  
9 Reporter, in the matter entitled herein;

10 That said transcript which appears  
11 hereinbefore was taken in stenotype notes by me from  
12 the CD and thereafter transcribed into typewriting as  
13 herein appears to the best of my knowledge, skill and  
14 ability and is a true record thereof.

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GAIL R. WILLSEY, CSR #359

1 CODE 3585  
2 EVELYN GROSENICK SBN 12217  
3 WASHOE COUNTY PUBLIC DEFENDER  
350 S. CENTER STREET, 5TH FLOOR  
EGROSENICK@WASHOECOUNTY.US  
4 RENO, NV 89501  
(775) 337-4800  
5 Attorney for Petitioner

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7  
8 IN AND FOR THE COUNTY OF WASHOE

9 TRAVIS BISH,

10 Petitioner,

11 vs.

CASE NO. CR20-2911

12 THE JUSTICE COURT FOR

DEPT. NO. 9

13 SPARKS TOWNSHIP, THE HON.

14 JESSICA LONGLEY, BY AND

15 THROUGH REAL PARTY IN

16 INTEREST, THE STATE OF NEVADA,

17 Respondents.

18 \_\_\_\_\_/  
19 EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS, OR IN THE  
20 ALTERNATIVE, PETITION FOR WRIT OF MANDAMUS; AND REQUEST  
21 FOR EMERGENCY HEARING

22 TO: The Honorable Judge of the Second Judicial District Court of the State of  
23 Nevada, in and for the County of Washoe.

24 ///

25 ///

26 ///

1 COMES NOW PETITIONER, Travis Bish, by and through counsel, Washoe  
2 County Public Defender John L. Arrascada and Chief Deputy Public Defender  
3 Evelyn Grosenick, and respectfully submits the following to be true:

4 1. Counsel is a duly qualified and licensed attorney authorized to practice  
5 law in the State Courts of Nevada, and is duly appointed as a Chief Deputy Public  
6 Defender and represents Petitioner, Mr. Bish.

7 2. Counsel makes this application on behalf of Mr. Bish for a Writ of  
8 Habeas Corpus; that Mr. Bish is restrained of his liberty; that the entities by  
9 whom Mr. Bish is restrained are the Sparks Justice Court and Washoe County  
10 Sheriff Darin Balaam.

11 3. The restraint of Mr. Bish is unlawful in that Mr. Bish has a state and  
12 federal constitutional right to be free from excessive bail and his current bail  
13 amount is unconstitutionally excessive.

14 4. No other petition for writ of habeas corpus for purpose of bail has  
15 heretofore been filed on behalf of Mr. Bish.

16 5. This *Petition* is based upon the grounds herein, the record in the Sparks  
17 Justice Court, and the pleadings on file herein; and upon such other grounds,  
18 argument, and evidence adduced at a hearing on this *Petition*.

19 WHEREFORE, Mr. Bish prays that this Honorable Court enter an order  
20 directing Sheriff Darin Balaam to appear before this Honorable Court, and return  
21 the cause for restraint of the Petitioner.

22 DATED this 6th day of October, 2020.

23 JOHN L. ARRASCADA  
24 Washoe County Public Defender

25 /s/ EVELYN GROSENICK  
26 Evelyn Grosenick  
Chief Deputy Public Defender



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1                                    MEMORANDUM OF POINTS AND AUTHORITIES

2   I. FACTS AND PROCEDURAL HISTORY

3            Mr. Bish is charged with one count of Sexual Assault Against a Child Under  
4   the Age of 14, a violation of NRS 200.366, a Category A felony, by way of a  
5   *Criminal Complaint* filed on September 16, 2020. *See* Crim. Compl., Ex. 1. The  
6   Complaint alleges a single incident of sexual abuse against Mr. Bish's nine-year-  
7   old daughter that allegedly occurred on August 22, 2020. *See id.* The allegation  
8   was brought to the attention of law enforcement on August 22, 2020. Probable  
9   Cause Document ("PC Document"), Ex. 2.<sup>1</sup> On September 11, 2020 Mr. Bish  
10   participated in an interview with law enforcement at the Sparks Police  
11   Department. *Id.* He was permitted to leave the Police Department at the  
12   conclusion of the interview. *Id.* He was arrested three days later, on September 14,  
13   2020. *Id.*

14            On September 15, 2020, Sparks Justice Court Justice of the Peace Jessica  
15   Longley set Mr. Bish's bail at \$30,000 bondable. *See* Bail Setting Form, Sept. 15,  
16   2020, Ex. 3. Under information and belief, Judge Longley set this bail based on the  
17   information available at the time, which was the PC Document and the Nevada  
18   Pretrial Risk Assessment ("NPRA"). *See* NPRA, Ex. 4.<sup>2</sup> Neither Mr. Bish, nor his  
19   counsel, nor a representative of the State were present for this initial setting of his  
20   conditions of release.

21            This case came before Judge Longley on September 18, 2020, for a bail  
22   hearing pursuant to *Valdez-Jimenez v. Eighth Judicial District Court*, 136 Nev.

23   \_\_\_\_\_  
24   <sup>1</sup> The Probable Cause Document is filed under seal in the Justice Court and due to  
25   the sensitive nature of the information contained therein, Petitioner requests that  
26   it be filed confidentially here as well.

<sup>2</sup> Petitioner requests that the NPRA (Exhibit 4) be filed confidentially due to the

1 Adv. Op. 20, 460 P.3d 976 (2020). *See* Docket, Ex. 5. At the hearing, the State  
2 requested an increase in bail to \$150,000. *See* Video of Sept. 18, 2020 Bail Hearing  
3 (“Video”), Ex. 6.<sup>3</sup> The State argued that Mr. Bish poses a danger to any individual  
4 similarly situated to the alleged victim based on the allegations in this case. *Id.*  
5 The State argued that Mr. Bish poses a flight risk due to the nature of the charges.  
6 *Id.* Specifically, the State argued that Mr. Bish faces thirty-five years to life in  
7 prison if convicted and he does not want other individuals to know about his  
8 charges, because the bail hearing was trailed to the end of the calendar.<sup>4</sup> *Id.* The  
9 State acknowledged that Mr. Bish’s employment with Tesla at the time of his  
10 arrest had been verified. *Id.*

11 Ms. Johnson, the mother of the alleged victim, testified under oath at the  
12 hearing. *Id.* She testified that Mr. Bish is her husband and she has three children,  
13 ages 9, 7, and 4. *Id.* The alleged victim, the nine-year-old, is Mr. Bish’s adopted  
14 daughter, and one of the other children is his biological child with Ms. Johnson. *Id.*  
15 Ms. Johnson testified that she and Mr. Bish were separated at the time of this  
16 allegation and Mr. Bish assisted with caring for the children while Ms. Johnson  
17 was at work. *Id.* Ms. Johnson testified that she had received some text messages  
18

19 nature of the information contained therein.

20 <sup>3</sup> The disk that contains the Video of the September 14, 2020 Bail Hearing includes  
21 the entire calendar for that morning. The bail hearing in this case begins at 26  
22 minutes and 30 seconds (26:30) from the beginning of the recording. All references  
23 to the video refer to the minutes and seconds from the beginning of the video. A  
24 hard-copy of this *Petition* and the video is being provided to this Court via the  
25 dropbox located at 1 South Sierra Street. Hard copies of this *Petition* and the video  
26 are being provided to the State and the Sparks Justice Court via interoffice mail.

<sup>4</sup> Mr. Bish did not request that his case go last; his attorney did. It is the Public  
Defender’s Office’s policy to request that hearings involving allegations of sex  
crimes be handled last. Our clients charged with sex-related crimes face physical  
violence and persecution from other inmates at the jail when other inmates learn  
of sex-related charges.

1 from Mr. Bish and his mother prior to Mr. Bish's arrest, and she did not want the  
2 texts from the mother to continue. *Id.* Ms. Johnson told the Court that she was in  
3 the process of obtaining a temporary protection order against Mr. Bish, *id.*,  
4 although she has not filed an application for a protection order with—nor has any  
5 protection order been issued by—any local court as of the filing of this Petition. *See*  
6 Search Results, Ex. 7.

7 Ms. Johnson testified that the alleged victim has regressed and is engaging  
8 in toddler-like tantrums since the investigation in this case begun. *See* Video, Ex.  
9 6. She testified that she does not think a bail in the amount of \$30,000 is “much,”  
10 given the allegations. *Id.* She testified that this case has impacted her and others,  
11 because now she has to rely on friends to watch her children while she is at work.  
12 *Id.* She testified she did not believe that Mr. Bish thought about how his alleged  
13 actions affected other people. *Id.*

14 Counsel for Mr. Bish pointed out that Mr. Bish scores in the low risk  
15 category (4) on the NPRA. *Id.* Pretrial Services had already verified Mr. Bish's  
16 employment. *See id.*; NPRA, Ex. 4. Counsel for Mr. Bish made an offer of proof  
17 that Mr. Bish could live with his mother in the Reno area if released, which would  
18 not be with the alleged victim. *See* Video, Ex. 6. Counsel for Mr. Bish pointed out  
19 that Mr. Bish is thirty-one years old with almost no criminal history. *Id.* The  
20 evidence at the hearing as to Mr. Bish's criminal history is that his only prior  
21 contact with law enforcement occurred in Colorado over seven years ago. *Id.* In  
22 2007, Mr. Bish had arrests for contempt and “public peace,” which the State  
23 likened to disturbing the peace. *Id.* In 2013, he was arrested for assault causing  
24 serious bodily injury, felony menacing with a real/simulated weapon, and  
25 disorderly conduct/fighting, but the felony assault and menacing charges were

26 ///

1 deferred and dismissed. *Id.* He has no arrests or convictions for any crime similar  
2 to the allegations in this case or for any crime against a child. *Id.*

3 Counsel for Mr. Bish requested an own-recognizance release with  
4 conditions, including GPS monitoring and/or house arrest if the Court deemed  
5 those conditions necessary. *Id.* In response to a question from the Judge, Mr. Bish  
6 stated that his mother does not own her own home. *Id.* At the time of the bail  
7 hearing, Mr. Bish had been in custody for five days on \$30,000 bail and had not  
8 been able to bail out. *See* Docket, Ex. 5.

9 The Court rendered its decision as follows:

10 At this time, I don't believe the \$150,000 bail is necessary here. I  
11 think that would be excessive in this case, due to his low risk of  
12 flight, his low risk of cr—or his low criminal history and the financial  
13 resources. The State did make the argument that he would only have  
14 to come up with \$4,500 cash, but he would also have to come up with  
15 an additional \$30,000 in collateral. Hearing a little bit more about  
16 Mr. Bish's circumstances—he is employed. He does have family here.  
17 I do believe that a lower bail than the \$150,000 is necessary.  
18 However, I am still concerned because while it appears that there is a  
19 very low risk of flight, there is still that risk of flight due to the  
20 nature of the charges, and if convicted it is a mandatory prison  
21 offense with a minimum of thirty-five years and a maximum of  
22 lifetime in prison.

23 I am going to raise the bail to \$50,000 bondable. There is no contact  
24 with any children—anybody under the age of eighteen. And if he  
25 resides with his mother, your mother needs to stop contacting [Ms.  
26 Johnson]. . . . Obey all laws and restraining order guidelines. . . .  
Enhanced supervision as well. I'm not ordering GPS as it's actually  
been proven that it's not, it has no effect. It's just an extra financial  
burden. But I do reserve the right to add extra conditions if I feel it  
necessary along the way.

See Video at 51:00, Ex. 6.

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1 Mr. Bish remains in custody on \$50,000 bail as of the filing of this *Petition*.  
2 See Jail Roster, Ex. 8. The next court date set in the case below is a mandatory  
3 status conference on October 26, 2020.

## 4 II. LEGAL AUTHORITY AND ARGUMENT

### 5 A. Petitioner's Liberty Is Being Restrained Unlawfully and He Has 6 No Plain, Speedy and Adequate Remedy.

7 A "writ [of mandamus] shall be issued in all cases where there is not a plain,  
8 speedy and adequate remedy in the ordinary course of law." NRS 34.170. "Every  
9 person unlawfully committed, detained, confined or restrained of his or her liberty,  
10 under any pretense whatever, may prosecute a writ of habeas corpus to inquire  
11 into the cause of such imprisonment or restraint." NRS 34.360.

12 "The test of the availability of the writ of habeas corpus is no longer  
13 confined to one of jurisdiction, but has been expanded to allow the presentation of  
14 questions of law that cannot otherwise be reviewed, or that are so important as to  
15 render ordinary procedure inadequate and justify the extraordinary remedy."  
16 *State ex rel. Orsborn v. Fogliani*, 82 Nev. 300, 302 (1966). The Nevada Supreme  
17 Court has held that a writ of habeas corpus is the appropriate means of  
18 challenging excessive bail or conditions of release. See *Ex parte Douglas*, 25 Nev.  
19 425 (1900); *Ex parte Jagles*, 44 Nev. 370 (1921); *Ex parte Malley*, 50 Nev. 248  
20 (1927); *Ex parte Wheeler*, 81 Nev. 495 (1965); *Fogliani*, 82 Nev. at 303–04 ("This  
21 Court has repeatedly held that a person should be discharged via the writ of  
22 habeas corpus where it is clear and undisputed that he is held by reason of the  
23 commission of an act which the law does not prohibit or penalize."); see also *People*  
24 *v. Standish*, 38 Cal. 4th 858 (2006) (in California, "it is settled that defendants  
25 may correct error in the setting of bail by seeking a writ of habeas corpus or other  
26 extraordinary writ ordering reconsideration of custody status or release").

1 In this case, Mr. Bish is being held unlawfully at the Washoe County Jail.  
2 Mr. Bish has no other plain, speedy, and adequate remedy for this violation.  
3 Therefore, this *Petition* is the appropriate vehicle to challenge the restraint on his  
4 liberty.

### 5 B. Standard of Review

6 This *Petition* presents a mixed question of law and fact. *See Hernandez v.*  
7 *State*, 124 Nev. 639, 646 (2008) (“[R]eview of a district court’s decision as a mixed  
8 question of law and fact is appropriate where the determination, although based  
9 on factual conclusions, requires distinctively legal analysis.”). Under this standard  
10 of review, the reviewing court gives “deference to the district court’s findings of  
11 fact but will independently review whether those facts satisfy the legal standard.”  
12 *Id.*; *see Rosky v. State*, 121 Nev. 184, 190 (2005) (discussing this standard of review  
13 as applied to a motion to suppress based on an alleged *Miranda* violation); *Somee*  
14 *v. State*, 124 Nev. 434, 441 (2008) (“The interplay of the factual circumstances  
15 surrounding a search or seizure and the constitutional standards for when  
16 searches and seizures are reasonable requires the two-step review of a mixed  
17 question of law and fact.”).

### 18 C. Valdez-Jimenez Controls the Analysis.

19 The Sparks Justice Court set Mr. Bish’s bail in an amount he cannot afford,  
20 \$50,000. The Court’s bail amount operates as a *de facto* detention order. *Valdez-*  
21 *Jimenez*, 460 P.3d at 987 (“We agree with petitioners that when bail is set in an  
22 amount that results in continued detention, it functions as a detention order, and  
23 accordingly is subject to the same due process requirements applicable to a  
24 deprivation of liberty.”).

25 Pretrial liberty is a fundamental constitutional right. *United States v.*  
26 *Salerno*, 481 U.S. 739, 750 (1987); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)

1 (“Freedom from imprisonment—from government custody, detention, or other  
2 forms of physical restraint—lies at the heart of the liberty that [the Due Process]  
3 Clause protects.”); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (“Freedom from  
4 bodily restraint has always been at the core of the liberty protected by the Due  
5 Process Clause from arbitrary governmental action.”); *United States v. Montalvo-*  
6 *Murillo*, 495 U.S. 711, 716 (1990) (holding that release prior to trial is a “vital  
7 liberty interest”). As such, any restraint on pretrial liberty compels heightened due  
8 process scrutiny. *See United States v. Salerno*, 481 U.S. 739, 746 (1987) (describing  
9 “procedural due process” restrictions on pretrial detention, and citing *Mathews v.*  
10 *Eldridge*, 424 U.S. 319, 335 (1976)); *Valdez-Jimenez*, 460 P.3d at 985-87.

11 In *Valdez-Jimenez*, the Nevada Supreme Court outlined the due process  
12 protections that must precede a detention order in Nevada. 460 P.3d at 985-87.  
13 Specifically, the arrestee “is entitled to a prompt individualized hearing on his or  
14 her custody status,” at which he has the “right to be represented by counsel,” and  
15 “the right to testify and present evidence.” *Id.* at 987. At the hearing, “the State  
16 has the burden of proving by clear and convincing evidence that no less restrictive  
17 alternative will satisfy its interests in ensuring the defendant’s presence and the  
18 community’s safety.” *Id.* Furthermore, the Court “must make findings of fact and  
19 state its reasons for the bail decision on the record.” *Id.* “Transcribed oral findings  
20 will satisfy this requirement as long as those findings provide a sufficient basis for  
21 the decision.” *Id.*

22 In *Valdez-Jimenez*, the Supreme Court provided guidance to lower courts on  
23 the substance of bail decisions. The inquiry begins with a presumption of release.  
24 *See Valdez-Jimenez*, 460 P.3d at 987 (“[T]he State has the burden of proving by  
25 clear and convincing evidence that no less restrictive alternative will satisfy its  
26 interests in ensuring the defendant’s presence and the community’s safety.”); *id.* at



1 987-88 (striking the “good cause language” from NRS 178.4851(1)). The Supreme  
2 Court “stress[ed] that for many individuals who are arrested, bail will not be  
3 necessary.” *Id.* at 986. Those defendants who present “little to no flight risk or  
4 danger to the community” must be released on their own recognizance, with or  
5 without nonmonetary conditions. *Id.* “On the other hand, where the defendant has  
6 an extensive history of failing to appear for court proceedings and few ties to the  
7 community, bail will likely be necessary.” *Id.*

8 The Supreme Court further emphasized that there are only two legitimate  
9 governmental interests that justify detention: the accused’s return to court and the  
10 safety of the community. *Id.* at 984 (“[F]or bail to be reasonable, it must relate to  
11 one of . . . two purposes—to ensure the appearance of the accused at all stages of  
12 the proceedings or to protect the safety of the victim and the community.”) “Bail  
13 [set] in an amount greater than necessary to ensure [these two interests] . . . is  
14 unconstitutional.” *Valdez-Jimenez*, 460 P.3d at 984.

15 **D. The State Failed To Prove By Clear and Convincing Evidence**  
16 **That Preventive Detention Is the Least Restrictive Means of**  
17 **Reasonably Assuring Mr. Bish’s Return to Court and the**  
18 **Safety of the Community.**

19 The State did not meet its burden of proving by clear and convincing  
20 evidence that detention is the least restrictive means of reasonably assuring Mr.  
21 Bish’s return to court and the safety of the community. The State’s argument is  
22 that Mr. Bish is charged with a serious crime that carries the possibility of a very  
23 long prison sentence if convicted.

24 “Neither the Constitution nor our rules of criminal procedure permit a judge  
25 to base a pretrial release decision solely on the severity of the charged offense.”  
26 *State v. Brown*, 2014-NMSC-038, ¶ 52, 338 P.3d 1276, 1292 (NM Sup. Ct. 2014);

1 *United States v. Scott*, 450 F.3d 863, 874 n.15 (9th Cir. 2006) (“Prior convictions  
2 and other reliably determined facts relating to dangerousness may be relevant to  
3 [danger to the community if released], but the mere fact that the defendant is  
4 charged with a crime cannot be used as a basis for a determination of  
5 dangerousness.”).

6 “Bail is not pretrial punishment and is not to be set solely on the basis of an  
7 accusation of a serious crime.” *Brown*, 338 P.3d at 1292. “As the United States  
8 Supreme Court has emphasized, [t]o infer from the fact of indictment alone a need  
9 for bail in an unusually high amount is an arbitrary act.” *Id.* (quoting *Stack v.*  
10 *Boyle*, 342 U.S. 1, 6 (1951)). “Imprisonment to protect society from predicted but  
11 unconsummated offenses is . . . fraught with danger of excesses and injustice.”  
12 *Williamson v. United States*, 184 F.2d 280, 282 (2d Cir. 1950). Therefore, judges  
13 “should exercise care not to give inordinate weight to the nature of the present  
14 charge in evaluating factors for the pretrial release decision.” ABA STANDARDS,  
15 Standard 10–1.7, at 50.

16 “Empirical studies indicate that the severity of the charged offense does not  
17 predict whether a defendant will flee or reoffend if released pending trial.” *Brown*,  
18 338 P.3d at 1292 (citing Curtis E.A. Karnow, *Setting Bail for Public Safety*, 13  
19 BERKELEY J. CRIM. L. 1, 14–16 (2008) (reviewing studies indicating that “evidence  
20 does not support the proposition that the severity of the crime has any relationship  
21 either to the tendency to flee or to the likelihood of re-offending”); 4 Wayne  
22 LaFave, et al., CRIMINAL PROCEDURE, § 12.1(b), at 12 (3d ed. 2007) (citing studies  
23 and stating that the “likelihood of a forfeiture does not appear to depend upon the  
24 seriousness of the crime”)). “Setting money bail based on the severity of the crime  
25 leads to either release or detention, determined by a defendant’s wealth alone  
26 ///

1 instead of being based on the factors relevant to a particular defendant's risk of  
2 nonappearance or reoffense in a particular case." *Id.*

3 In *United States v. Friedman*, the defendant was charged in federal court  
4 with three counts alleging that he sent and received child pornography through  
5 the U.S. Mail. 837 F.2d 48, 48-49 (2d Cir. 1988). He also faced sexually motivated  
6 charges in state court based on allegations that while employed as "a computer  
7 teacher, . . . [he] had sodomized and sexually assaulted a number of his male  
8 students between the ages of eight and twelve." *Id.* at 49. The District Court "ruled  
9 that the evidence of Friedman's sexual abuse of children, his collection of  
10 pornography, the seriousness of his federal charges and the erosion of support for  
11 him in the community justified detention prior to trial." *Id.*

12 Mr. Friedman challenged the District Court's pretrial detention order  
13 through an appeal. *Id.* at 48. On appeal, the government argued "that Friedman  
14 present[ed] a serious risk of flight because of the nature of the charges against  
15 him, the strength of the government's case, the long sentence of incarceration he  
16 may receive, his age and the obloquy that he faces in his community." *Id.* at 49.  
17 Many of these arguments are strikingly similar to the arguments made by the  
18 State during Mr. Bish's bail hearing.

19 In *Friedman*, "it [was also] undisputed that Friedman [was] a life-long New  
20 York resident, that he ha[d] no prior criminal record, that he ha[d] no passport or  
21 known ability to evade surveillance, that he ha[d] worked gainfully in the New  
22 York area for twenty-five years prior to his arrest, and that he [was] married and  
23 has three children, all of whom live[d] in the New York area." *Id.* at 49-50.  
24 "Moreover, Friedman apparently took no steps to leave the jurisdiction after  
25 federal agents executed a search warrant at his home on November 3, 1987 and  
26 after he was arrested at home on state charges three weeks later." *Id.* at 50.

1       The Circuit Court reversed the District Court's detention order. *Id.* The  
2 Circuit Court noted that "[i]n other cases concerning risk of flight, we have  
3 required more than evidence of the commission of a serious crime and the fact of a  
4 potentially long sentence to support a finding of risk of flight." *Id.* Factors that  
5 support risk of flight included having "a number of aliases," moving between  
6 hotels, showing prior "skill in avoiding surveillance," having "hidden assets," and  
7 prior fugitive status ending in capture. *Id.*

8       In the present case, the State argued—and the Court agreed—that Mr. Bish  
9 poses a risk of flight based solely on the nature of the charges and the long  
10 potential prison sentence he faces if convicted. *See* Video, Ex. 6. Judge Longley  
11 specifically concluded that "there is a very low risk of flight." *Id.* This conclusion is  
12 supported by the evidence that Mr. Bish has family in the area, ties to the  
13 community, and employment. *Id.* He can live with his mother in Reno if released,  
14 so he has a place to live that is not with the alleged victim. *Id.* One of the three  
15 children that lives with Ms. Johnson is Mr. Bish's biological child, which is further  
16 incentive for Mr. Bish to remain in the area. *Id.*

17       There is no evidence that Mr. Bish has ever failed to appear for court. More  
18 tellingly, the investigation in this case began on August 22, 2020. *See* PC  
19 Document, Ex. 2. Mr. Bish agreed to participate in an interview with Sparks Police  
20 officers on September 11, 2020, in which he was questioned about the allegations  
21 in this case. *Id.* Mr. Bish was permitted to leave the Police Department at the  
22 conclusion of the interview. *Id.* He was arrested three days later, on September 14,  
23 2020. *Id.* Significantly, he made no attempt to flee in between the time he was  
24 interviewed and his arrest. *Id.*

25       The State also failed to prove by clear and convincing evidence that Mr.  
26 Bish must be detained in order to protect the community at large and the alleged

1 victim. Mr. Bish's criminal history is both minimal and remote. *Id.* He has no prior  
2 arrests for anything sexually motivated or for a crime against a child. *Id.* The  
3 alleged victim in this case is someone known to him, not a random child he picked  
4 up on the street. No evidence was presented that Mr. Bish poses any risk to the  
5 community at large if released. As for danger to the alleged victim or similarly  
6 situated individuals, there was no evidence of abuse against the other two children  
7 in the household. *Id.* Further, the allegation in this case is of a single incident, not  
8 an ongoing course of conduct. Crim. Compl., Ex. 1; PC Document, Ex. 2. Ms.  
9 Johnson never testified that Mr. Bish poses further danger to the alleged victim or  
10 the other children if released. Video, Ex. 6. The Court imposed a no-contact order  
11 between Mr. Bish and anyone under the age of 18, including the alleged victim,  
12 and anyone within Ms. Johnson's household. *Id.* The Court also ordered that Mr.  
13 Bish be placed on enhanced supervision with Pretrial Services if released. *Id.*  
14 What difference does the posting of \$50,000 bail make to whether Mr. Bish can be  
15 trusted to follow those orders? A better indication is Mr. Bish's lack of significant  
16 criminal history and his cooperation with law enforcement during the  
17 investigation in this case.

18         The State failed to carry its burden of clear and convincing evidence that  
19 preventive detention is the least restrictive means of reasonably assuring that Mr.  
20 Bish returns to court and the protection of the community. The Justice Court  
21 abused its discretion in setting bail at \$50,000, an amount that Mr. Bish cannot  
22 afford.

23         The Court's reasoning results in one of two outcomes. First, anyone charged  
24 with a serious crime—such as the one Mr. Bish is charged with—must be detained  
25 pretrial, regardless of how little risk of flight or danger to the community he poses.  
26 In the alternative, only those defendants who can afford to post a high monetary

1 bail will be released. Neither result is acceptable under *Valdez-Jimenez* or federal  
2 constitutional case law.

3 **E. The Federal Bail Reform Act of 1984 Does Not Control Pretrial**  
4 **Release Decisions in Nevada State Courts.**

5 The Court may look to the Federal Bail Reform Act of 1984 in deciding this  
6 *Petition*, since the Court did that in a previous case. See Order Denying, at 5:24-  
7 25, *Meyer v. Balaam, Washoe Cty. Sheriff*, CR20-1108 (Apr. 28, 2020) (holding that  
8 “the [federal] Bail Reform Act governs pretrial detention hearings” in deciding a  
9 writ petition challenging bail practices in the justice courts), *appeal pending in*  
10 *Meyer v. Sheriff*, Docket No. 8113 (opening brief filed Sept. 30, 2020).

11 The Federal Bail Reform Act and federal case law interpreting congruent  
12 constitutional principles may provide guidance in applying the protections of  
13 *Valdez-Jimenez* in state court practice. However, state courts are not controlled by  
14 the Federal Bail Reform Act under basic principles of federalism. See *Wyeth v.*  
15 *Levine*, 555 U.S. 555, 565 (2009) (“First, the purpose of Congress is the ultimate  
16 touchstone in every pre-emption case. Second, [i]n all pre-emption cases, and  
17 particularly in those in which Congress has legislated . . . in a field which the  
18 States have traditionally occupied, . . . we start with the assumption that the  
19 historic police powers of the States were not to be superseded by the Federal Act  
20 unless that was the clear and manifest purpose of Congress.” (internal quotations  
21 and citations omitted; alterations in original)); see 18 USCA §§ 3141, 3143, & 3041  
22 (limiting Federal Bail Reform Act to cases involving “offenses against the United  
23 States”); *People ex rel. Hinspeter v. Senkowski*, 194 Misc. 2d 302, 307, 752 N.Y.S.2d  
24 821, 828 (NY Sup. Ct. 2002) (“As is obvious from this definition, the Bail Reform  
25 Act has no application to state court proceedings but applies instead only to  
26 Federal prosecutions.”).

1 Of specific concern is the fact that the Federal Bail Reform Act contains a  
2 presumption of detention for defendants charged with certain crimes or who have  
3 certain characteristics (i.e., are on probation or parole when arrested). 18 U.S.C.A.  
4 § 3142. The only presumption under Nevada law applicable in this case is the  
5 presumption of release pursuant to *Valdez-Jimenez*. 460 P.3d at 987.

6 Federal caselaw interpreting the Federal Bail Reform Act have imposed a  
7 lower evidentiary burden—preponderance—regarding risk of flight. *See United*  
8 *States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir. 1985) (“[T]he Government must  
9 establish risk of flight by a clear preponderance of the evidence, not by the higher  
10 standard of clear and convincing evidence.”). Again, there is no reduced  
11 evidentiary standard for risk of flight under *Valdez-Jimenez*. In Nevada state  
12 courts, the State must demonstrate by clear and convincing evidence that the  
13 restrictions on liberty they seek—in this case, preventive detention—are the least  
14 restrictive conditions that will reasonably assure the defendant’s return to court  
15 and the safety of the community. *Valdez-Jimenez*, 460 P.3d at 988. As explained  
16 above, the State has failed to carry that burden.

### 17 III. CONCLUSION

18 The Court’s order imposing bail in the amount of \$50,000 operates as a *de*  
19 *facto* detention order. The Court’s detention order is not supported by the record.  
20 The State failed to demonstrate by clear and convincing evidence that pretrial  
21 detention is the least restrictive means of reasonably assuring Mr. Bish’s return to  
22 court and the safety of the community and alleged victim.

23 ///

24 ///

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26 ///

1           Accordingly, Mr. Bish requests and order from this Court vacating the  
2 detention order and remanding the case with instructions to release Mr. Bish on  
3 his own recognizance with appropriate conditions. Mr. Bish also requests a  
4 hearing on this Petition as soon as practicable.

5                           **AFFIRMATION PURSUANT TO NRS 239B.030**

6           The undersigned does hereby affirm that the preceding document does not  
7 contain the social security number of any person.

8           DATED this 6th day of October, 2020.

9                           JOHN L. ARRASCADA  
10                          Washoe County Public Defender

11                          /s/ EVELYN GROSENICK  
12                          EVELYN GROSENICK  
13                          Chief Deputy Public Defender  
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Deputy District Attorney Brittany Bishop  
Via Email and ECF

DATED this 6th day of October, 2020.

/s/ Linda Gray  
LINDA GRAY

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EXHIBITS

<u>Exhibit</u>	<u>Pages</u>
1. Criminal Complaint	2
2. Probable Cause Document	4
3. Bail Setting Form	1
4. Nevada Pretrial Risk Assessment	2
5. Docket	1
6. Video of Sept. 18, 2020 Bail Hearing	N/A
7. Search Results	1
8. Jail Roster	1

# EXHIBIT 1

# EXHIBIT 1

DA #20-10610

SPD 20-006129

IN THE JUSTICE COURT OF SPARKS TOWNSHIP

IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

\* \* \*

THE STATE OF NEVADA,

Plaintiff,

20-SCR-01369

Case No.: RCR2020-

v.

Dept. No.: 2

TRAVIS BISH,

Defendant.

CRIMINAL COMPLAINT

BRITTANY K. BISHOP of the County of Washoe, State of Nevada, verifies and declares upon information and belief and under penalty of perjury, that TRAVIS BISH, the defendant above-named, has committed the crime of:

COUNT I. SEXUAL ASSAULT AGAINST CHILD UNDER THE AGE OF 14 YEARS, a violation of NRS 200.366, a category A felony, (50105) in the manner following, to wit:

That the said defendant, TRAVIS BISH, on or about August 22, 2020, at or about 1475 Vista Del Rancho Drive, Apt #266, within the County of Washoe, State of Nevada, did willfully and unlawfully subject A.I., a female child under the age of 14 years, to sexual penetration, to wit, the said defendant placed his finger(s) inside the child victim's vagina.

///

///

///

1                   AFFIRMATION PURSUANT TO NRS 239B.030

2                   The undersigned does hereby affirm that the preceding  
3 document does not contain the social security number of any person.  
4

5                   DATED this 15th day of September, 2020.  
6

7  
8                   Brittany Bishop

9                   BRITTANY K. BISHOP  
10                  NBN 13745  
11                  DEPUTY DISTRICT ATTORNEY  
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23                  PCN: SPPD0063649C-BISH

24                  Custody: X

25                  Bailed:

26                  Warrant:

                  District Attorney Assigned: BISHOP|13745

                  District Court #: CR20-2911|BISH

                  District Court Dept: D09

                  Defense Attorney:

                  Restitution:

                  J

## EXHIBIT 3

## EXHIBIT 3



Second Judicial District Court  
Washoe County  
Pretrial Services  
75 Court Street, Reno, NV 89501  
(775) 325-6600

FILED  
Electronically  
SPARKS JUSTICE  
COURT  
09/15/20  
A. Molina

Defendant: Bish, Travis

Case # SPD20-6129

**JUDICIAL RESPONSE (CHOOSE ONE ACTION: A, B, C, OR D)**

- A) ☐ Own Recognizance Release  
B) ☐ Bail to be set by Judge at next in-person hearing

C) ☒ Impose money bail \$ 30,000

☐ Cash only

D) ☐ Bail to remain as set on warrant

☒ No contact with victim

IMPOSED conditions are:



as recommended

OR

☐ Basic Supervision

☐ Medium Supervision

☐ Enhanced Supervision

List reason if the supervision level IMPOSED is different than what was RECOMMENDED:

Date

Judge Signature

9:15 am Sep 15 2020

**\*\*Judicial Response needed on last page\*\***

## EXHIBIT 5

## EXHIBIT 5



**REGISTER OF ACTIONS****CASE No. 20-SCR-01369****The State of Nevada vs. Travis Bish**§  
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Case Type: **Felony**  
 Date Filed: **09/16/2020**  
 Location: **Sparks Criminal**  
 Judicial Officer: **Higgins, Kevin**  
 Agency Number: **SPD20-6129**  
 Booking Number: **20-9998**  
 District Attorney Number: **20-10610**  
 District Court Number: **CR20-2911**  
 Other Cross Reference Number: **2JDC D9**  
 Probable Cause Number: **SPPD0063649C**

**PARTY INFORMATION**

<b>Defendant</b>	<b>Bish, Travis</b>  1445 W7th St #D Reno, NV 89502 DL: NV0805202025	Male White DOB: 09/30/1988 5' 11", 190 lbs	<b>Attorneys</b> <b>Jay Slocum</b> <i>Court Appointed</i>  Kevitt Adler <i>Court Appointed</i> 775-337-4800(W)  Public Defender <i>Court Appointed</i> 775-337-4800(W)
<b>Plaintiff</b>	<b>The State of Nevada</b>  <b>Brittany Bishop</b> 775-328-3540(H)		

**CHARGE INFORMATION**

<b>Charges: Bish, Travis</b>	<b>Statute</b>	<b>Level</b>	<b>Date</b>
1. Sexual assault against child under 14	NRS 200.366.3c	Felony - Category A	08/22/2020

**EVENTS & ORDERS OF THE COURT**

**OTHER EVENTS AND HEARINGS**

09/15/2020 **Court Found Probable Cause**  
SEALED

09/15/2020 **Public Defender Appointed**

09/15/2020 **Washoe County Pretrial Services Assessment Report**

09/15/2020 **Nevada Pre-trial Risk Assessment Low**

09/15/2020 **Bail Set** (Judicial Officer: Longley, Jessica )  
\$30,000 bondable with enhanced supervision; no contact with victim

09/15/2020 **Probable Cause Findings/Hearings (4:00 PM)** (Judicial Officer Judge, Probable Cause)  
Result: Held

09/16/2020 **Case Filed**

09/17/2020 **Arraignment** (8:30 AM) (Judicial Officer Longley, Jessica)  
Result: Held

09/17/2020 **Zoom Appearance**

09/17/2020 **True Name for this record is declared:**  
Travis Bish, pursuant to NRS 174.025

09/17/2020 **Hearing Result:**  
Bail hearing requested by the State to be held within 24 hours.

09/18/2020 **Bail Hearing** (8:30 AM) (Judicial Officer Longley, Jessica)  
Result: Held

09/18/2020 **Zoom Appearance**

09/18/2020 **Bail Hearing**  
State request bail be increased to \$150,000 bondable. Defense requests defendant be released on his own recognizance. Court increases bail to \$50,000 bondable with enhanced supervision. No contact with all children under the age of eighteen (18). If defendant is released on supervised bail and resides with his mother, his mother is to have no contact with victim.

09/18/2020 **Bail Increased**  
\$50,000 bondable with enhanced supervision. No contact with all children under the age of eighteen (18). If defendant is released on supervised bail and resides with his mother, his mother is to have no contact with victim.

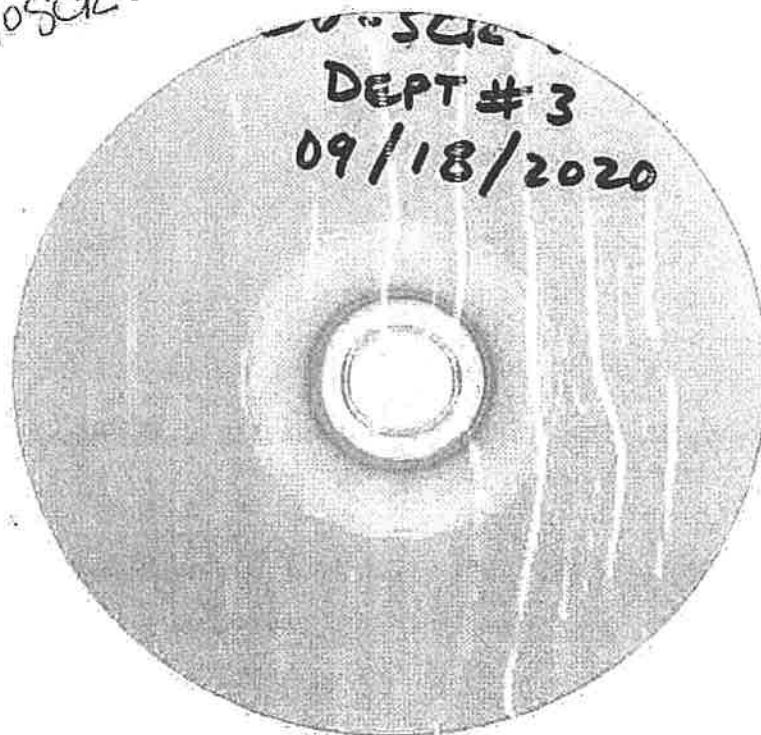
09/24/2020 **Request for Audio CD Filed**  
E. Grosenick

10/26/2020 **Mandatory Status Conference** (2:00 PM) (Judicial Officer MSC, Judge)  
09/23/2020 Continued to 10/26/2020 - MSC Reset/Continuance - Bish, Travis

## EXHIBIT 6

## EXHIBIT 6

205CR 01369 BISH



## EXHIBIT 7

## EXHIBIT 7



Second Judicial District Court<sup>(1)</sup>  
State of Nevada  
Washoe County

## Person Search

Search by Name (partial entries acceptable)

\*Note\* Searches are limited to a MAXIMUM of 5,000 records. If you are having trouble finding what you are looking for, please refine your search.  
If you are looking for future calendered court dates Click Here (/Query/UpcomingNameSearch).

### Last Name

Enter Last Name

### First Name

Enter First Name

### ID (ex. bar number)

Q Search

Information contained in this list is subject to change without notice from the Court.

Click on column headers to sort list

Multiple search terms and partial search terms accepted

Try scrolling left/right if table appears cut off

Show 25 entries

Search:

Last Name	First Name	ID No.	Case Number	Case Description
BISH	TRAVIS	@1362028	CR20-2911 (/Query/CaselInformation/CR20-2911)	STATE VS. TRAVIS BISH (D9)
BISHOP	TRAVIS	@1178263	CV10-00330 (/Query/CaselInformation/CV10-00330)	ST OF NV, ETAL VS. ONE GLOCK MODEL 19 SEMI AUTOMAT

Showing 1 to 2 of 2 entries

Previous 1 Next

The District Court is comprised of 15 Departments. Each Judge sits in a differently numbered Department. When a Judge leaves service, the new Judge's name replaces the former Judge's name on all matters pending and previously closed in that department. This change will not reflect that a previous sitting Judge presided over a matter.

[Administrative Orders \(/Main/AdminOrders\)](#)

[Job Opportunities \(/Main/Jobs\)](#)

[Hours & Location \(/Main/HoursLocation\)](#)

[Contact Us \(/Main/Contact\)](#)

[About This Site \(/Main/About\)](#)

[Related Sites \(/Main/Related\)](#)

[Organizational Chart \(/Main/OrgChart\)](#)

**EFLX** (<https://wceflex.washoecourts.com/>)



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(<http://www.geotrust.com/ssl/>)

Second Judicial District Court © 2019 - [www.washoecourts.com](http://www.washoecourts.com)  
75 Court Street, Reno, Nevada, 89501



Online - Click here to get help

## Civil, Family & Probate Case Records Search Results

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New Civil Search](#) [Refine Search](#)

[Location](#) [All Courts](#) [Help](#)

Record Count: 1

Search By: Party Party Search Mode: Name Last Name: bish\* First Name: travis\* All All Sort By: Filed Date

Case Number	Style	Filed/Location/Judicial Officer	Type/Status
<a href="#">19-SEV-0927</a>	VERONA APARTMENT HOMES vs. Travis Bish	12/27/2019 Sparks Civil Longley, Jessica	Eviction Concluded

## EXHIBIT 8

## EXHIBIT 8

## Inmate Search

This information is updated every 15 minutes. The Washoe County Sheriff's Office is not liable for any erroneous information on this site. This may not be a complete list of in custody inmates. If you feel that the person you are searching for is in custody and cannot be located with this search, please contact the Washoe County Detention Facility at 775-328-3062.

You must enter at least the first five letters of the inmate's last name.

Last Name

Search

**Bish, Travis**

**Booking Number:** 2009998  
**Age:** 32  
**JID Number:** P00181066  
**Booking Date:** Sep 14, 2020  
**Housing Unit:** H17 - [Inmate Visiting Info](#)

[Click to enlarge](#)



### Charges (1 total)

Charge Name	Bail Amount	Court Agency	Case #	Court Date	Court Time
Sexual Asslt Against Childless14	50000.00 - BOND	SJC SPD	200006129	Sep 23, 2020	1400



1 CODE: 3370

2  
3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
4 IN AND FOR THE COUNTY OF WASHOE

5  
6 TRAVIS BISH,

7 Petitioner,

Case No.: CR20-2911

Dept. No.: 9

8 v.

9 THE JUSTICE COURT FOR SPARKS  
10 TOWNSHIP, THE HON. JESSICA  
11 LONGLEY, BY AND THROUGH REAL  
12 PARTY IN INTEREST, THE STATE OF  
NEVADA,

13 Respondents.  
14

15 **ORDER DIRECTING THE STATE TO RESPOND**

16 The Court is in receipt of Petitioner TRAVIS BISH's ("Petitioner") *Emergency Petition for*  
17 *Writ of Habeas Corpus, or in the Alternative, Petition for Writ of Mandamus; and Request for*  
18 *Emergency Hearing* filed October 6, 2020.

19 Upon review of the *Emergency Petition*, the Court believes that a responsive pleading with  
20 accompanying points and authorities from the Respondent would assist the Court in resolving  
21 Petitioner's claim. Thus, this Court orders the Washoe County District Attorney's Office to file a  
22 responsive pleading, with accompanying points and authorities, within five (5) business days of this  
23 Order.

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1           THEREFORE, and good cause appearing, IT IS HEREBY ORDERED that the Washoe  
2 County District Attorney's Office file a responsive pleading with accompanying points and  
3 authorities to the *Emergency Petition* filed October 6, 2020. The Washoe County District  
4 Attorney's Office has five (5) business days from the entry of this Order to file such response. Upon  
5 filing the points and authorities, Petitioner shall submit this matter to the Court for review pursuant  
6 to WDCR 12(4)

7           IT IS SO ORDERED.

8           DATED: this 12<sup>th</sup> day of October 2020.

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10 \_\_\_\_\_  
11 DISTRICT JUDGE  
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[NONE]

BRITTANY BISHOP, ESQ for STATE OF NEVADA  
EVELYN GROSENICK, ESQ. for TRAVIS BISH

Bill

## Judicial Assistant

1 CODE 3880  
2 Christopher J. Hicks  
3 #7747  
4 One South Sierra Street  
5 Reno, NV 89501  
6 districtattorney@da.washoecounty.us  
7 (775) 328-3200  
8 Attorney for Respondent

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
10  
11 IN AND FOR THE COUNTY OF WASHOE.

12 \* \* \*

13 TRAVIS BISH,

14 Petitioner,

Case No: CR20-2911

15 v.

Dept: D09

16 THE JUSTICE COURT FOR SPARKS TOWNSHIP,  
17 THE HON. JESSICA LONGLEY,  
18 BY AND THROUGH REAL PARTY IN INTEREST,  
19 THE STATE OF NEVADA

20 Respondents.

21 STATE'S RESPONSE TO PETITIONER'S EMERGENCY PETITION FOR WRIT OF  
22 HABEAS CORPUS, OR IN THE ALTERNATIVE, PETITION FOR WRIT OF MANDAMUS;  
23 AND REQUEST FOR EMERGENCY HEARING

24 The State of Nevada, by and through CHRISTOPHER J. HICKS,  
25 Washoe County District Attorney and Brittany K. Bishop, Deputy  
26 District Attorney, hereby files State's Response to Petitioner's  
Emergency Petition for Writ of Habeas Corpus, or in the Alternative  
Petition for Writ of Mandamus, and Request for Emergency Hearing  
(hereinafter "Response"). This Response is based upon the attached  
Memorandum of Points and Authorities, the pleadings and papers on  
file herein, and any argument that may be adduced at a hearing of  
this matter.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. Factual and Procedural Background

3 On September 14, 2020, Travis Bish (hereinafter "Petitioner")  
4 was arrested and booked on one count of Sexual Assault of a Child  
5 Under Age 14, a Category A felony. The following morning, September  
6 15, 2020, Sparks Justice Court Justice of the Peace Jessica Longley  
7 ("Justice Longley") set a cash bail for Petitioner at \$30,000.00,  
8 bondable. On September 16, 2020, Deputy District Attorney Brittany  
9 Bishop("DDA Bishop") filed a complaint against Petitioner, alleging  
10 the same charge. The State avers that the Petitioner sexually  
11 assaulted his nine ("9") year old adopted daughter, A.I., by digital  
12 penetration of her vagina. On both September 11, 2020 and September  
13 14, 2020, Petitioner told Sparks Police Department Detective Zachary  
14 May ("Detective May") that his fingers went into the 9-year-old  
15 female child's vagina. The female child was forensically interviewed  
16 at the Child Advocacy Center and disclosed digital penetration of her  
17 vagina by Petitioner.

18 The morning of September 17, 2020, Petitioner was arraigned, and  
19 counsel for the Petitioner asked to address Petitioner's bail  
20 pursuant to *Valdez-Jimenez*, but requested to continue the hearing so  
21 that defense counsel could appropriately prepare. DDA Bishop,  
22 Detective May and the victim's mother/Petitioner's wife were all  
23 present and prepared to address the Court regarding Petitioner's bail  
24 at that time. On information and belief, no witnesses were present on  
25 behalf of Petitioner.

26 ///

1           Nonetheless, Petitioner's request to continue the hearing was  
2 granted, and a bail hearing transpired the following morning,  
3 September 18, 2020, with Justice Longley presiding.<sup>1</sup> DDA Bishop,  
4 Detective May, and the victim's mother/Petitioner's wife were again  
5 in attendance and prepared to address the Court regarding  
6 Petitioner's request to address bail. Pet. Exh. 6. Petitioner did not  
7 present any witnesses in support of his request for a release on his  
8 own recognizance, nor did Petitioner present any documentary or other  
9 evidence, despite the fact that the hearing had been continued at  
10 Petitioner's own request so his counsel could be prepared for the  
11 hearing.

12           The State referred to documentary evidence including the  
13 probable cause sheet, "NCIC", and police reports, presented  
14 testimonial evidence from the child victim's mother/Petitioner's  
15 wife, gave argument, and requested a bail increase to \$150,000.00,  
16 bondable. Pet. Exh. 6. The Public Defender's office gave argument and  
17 requested that Petitioner be released on his own recognizance. Pet.  
18 Exh. 6.

## 19       **II. Standard of Review**

20           Generally, "a pretrial release decision is a matter within the  
21 sound discretion of the trial court." *Valdez-Jimenez v. Eighth*  
22 *Judicial Dist. Court in & for Cty. of Clark*, 136 Nev. Adv. Op. 20,  
23 460 P.3d 976, 984 (2020); *See In re Wheeler*, 81 Nev. 495, 500, 406  
24 P.2d 713, 716 (1965). Thus, this Court's standard of review is abuse  
25

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26       <sup>1</sup> The State will not attempt to summarize the hearing, as Petitioner provided a  
recorded copy of the hearing to the Court as an Exhibit to the Writ(s). Arguments  
of both counsel are included in their entirety on the video.

1 of discretion; that is, whether the lower court abused its discretion  
2 in determining bail. *Application of Wheeler*, 81 Nev. 495, 500, 406  
3 P.2d 713, 716 (1965). Accordingly, both of Petitioner's Writ  
4 requests must be viewed through the lens of whether Justice Longley  
5 abused her discretion. As detailed herein, she did not. Petitioner's  
6 requests should be denied.

#### 7 **A. Pretrial Writ of Habeas Corpus**

8 "Every person unlawfully committed, detained, confined or  
9 restrained of his or her liberty, under any pretense whatever, may  
10 prosecute a writ of habeas corpus to inquire into the cause of such  
11 imprisonment or restraint." NRS 34.360. NRS 34.500(7) allows for the  
12 discharge of an in-custody Petitioner in some instances.<sup>2</sup> If no legal  
13 cause can be shown for imprisonment or restraint, or for the  
14 continuation thereof, the judge shall discharge such party from the  
15

16 <sup>2</sup> NRS 34.500(7) provides that a petitioner may be discharged if:

- 17 1) the jurisdiction of the court or officer has been exceeded;  
18 2) the imprisonment was at first lawful, yet by some act, omission or event,  
19 which has taken place afterwards, the petitioner has become entitled to be  
20 discharged;  
21 3) the process is defective in some matter of substance required by law,  
22 rendering it void;  
23 4) the process, though proper in form, has been issued in a case not allowed  
24 by law;  
25 5) the person having the custody of the petitioner is not the person allowed  
26 by law to detain the petitioner;  
27 6) the process is not authorized by any judgment, order or decree of any  
28 court, nor by any provision of law;  
29 7) the petitioner has been committed or indicted on a criminal charge,  
30 including a misdemeanor, except misdemeanor violations of chapters 484A to 484E,  
31 inclusive, of NRS or any ordinance adopted by a city or county to regulate traffic,  
32 without reasonable or probable cause;  
33 8) the petitioner has been committed or indicted on any criminal charge under  
34 a statute or ordinance that is unconstitutional, or if constitutional on its face  
35 is unconstitutional in its application;  
36 9) the court finds that there has been a specific denial of the petitioner's  
constitutional rights with respect to the petitioner's conviction or sentence in a  
criminal case.

1 custody or restraint under which the party is held. NRS 34.480  
2 (emphasis added). As shown in this Response and was demonstrated by  
3 clear and convincing evidence at an adversarial hearing, legal cause  
4 has been shown for restraint of defendant. A Pretrial Writ of Habeas  
5 Corpus is not valid here.

6 **B. Writ of Mandamus**

7 Writ relief is available only in "cases where there is not a  
8 plain, speedy and adequate remedy in the ordinary course of law." NRS  
9 34.170. A writ of mandamus is appropriate "to compel the performance  
10 of an act that the law requires as a duty resulting from an office,  
11 trust, or station or to control an **arbitrary or capricious** exercise  
12 of discretion." *Int'l Game Tech., Inc. v. Second Judicial Dist.*  
13 *Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008) (emphasis added).  
14 Because a writ of mandamus is an extraordinary remedy, it is within  
15 this Court's "complete discretion whether to consider it". *Cote H. v.*  
16 *Eighth Judicial Dist. Court*, 124 Nev. 36, 39, 175 P.3d 906, 908  
17 (2008). Petitioner bears the burden of demonstrating that  
18 extraordinary relief is warranted. *Pan v. Eighth Judicial Dist.*  
19 *Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

20 The Petitioner has failed to achieve his burden of showing that  
21 he warrants extraordinary relief from this Court. Nothing in  
22 Petitioner's motion demonstrates that Justice Longley abused her  
23 discretion in setting defendant's bail at \$50,000.00, bondable, or  
24 that her actions were arbitrary or capricious. As detailed herein,

25 ///

26 ///



1 should this Court consider Petitioner's requests, both of Petitioners  
2 requests for relief should respectfully be denied.<sup>3</sup>

3 **III. Legal Argument**

4 **A. Justice Longley Did Not Abuse Her Discretion In Concluding The**  
5 **State Proved By Clear And Convincing Evidence That \$50,000.00**  
6 **Bail Is The Least Restrictive Alternative To Satisfy The**  
7 **State's Interests.**

8 The State concedes that Valdez-Jimenez controls. We do not  
9 endeavor to relitigate Nevada Supreme Court precedent. Pursuant to  
10 Valdez-Jimenez, at a "full-blown adversarial hearing" at which the  
11 defendant has "the right to testify and present evidence," "the State  
12 has the burden of proving by clear and convincing evidence that no  
13 less restrictive alternative will satisfy its interests in ensuring  
14 the defendant's presence and the community's safety." Valdez-Jimenez  
15 thusly identifies that State's interests are twofold: 1) ensuring the  
16 defendant's presence at further proceedings; and 2) protecting  
17 victims of the defendant, as well as the community at large.

18 Petitioner received a timely hearing - in fact, the morning  
19 after Petitioner was arrested, he had the opportunity to address  
20 bail. The State, along with two witnesses, were present and prepared  
21 to address bail. Nonetheless, Petitioner requested to continue the  
22 hearing to the following day. The hearing was adversarial, as the  
23 next morning, the State, including the charging/responsible DDA, and  
24 the same two witnesses, appeared for the hearing. Petitioner was

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25 <sup>3</sup> In Valdez-Jimenez, the Court elected to entertain the petition for writ of  
26 mandamus, which was alternatively described as a petition for a writ of habeas  
corpus. This is identical to Petitioner's styling of his requests in the instant  
matter. Notably, the Valdez-Jimenez Court summarily denied the request for habeas  
relief, in light of its denial of the petitions for writs of mandamus. Thus, here  
too, both requests for relief should be denied.

1 represented by an attorney from the Washoe County Public Defender's  
2 office. Petitioner had the opportunity to call witnesses and present  
3 evidence, but did not do so.

4 Here, after a timely "full blown adversarial hearing" with  
5 witnesses, wherein the State provided evidence and argument regarding  
6 defendant's risk of flight and danger to the victims and community,  
7 and Petitioner's counsel provided argument, Justice Longley utilized  
8 the requisite *Valdez-Jimenez* considerations and concluded that the  
9 State had proven by clear and convincing evidence that bail was  
10 necessary, and that setting Petitioner's bail at \$50,000.00, bondable  
11 was the least restrictive alternative to achieve those aims.  
12 Although Petitioner reaches back more than thirty years and as far as  
13 the Second Circuit to find support for its' Petition,<sup>4</sup> Petitioner has  
14 not provided any precedent for why the State should be forced to re-  
15 litigate all of the reasons why it believes bail is necessary, and  
16 this Court should respectfully ignore Petitioner's request to  
17 undertake a second bite of the apple.

18 **B. Petitioner Did Not Provide Any Evidence In Support Of His**  
19 **Request For An Own Recognizance Release, And Cannot Rely On**  
20 **Facts Not In Evidence In Support Of His Request.**

21 Petitioner's Writs rely almost entirely on facts not in evidence,  
22 and those facts should be ignored, such that the Writs are denied.  
23

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24 <sup>4</sup> See Pet. Writ. at p. 13-14, where Petitioner attempts to liken the Second  
25 Circuit's reversal of a **District Court** bail determination in *United States v.*  
26 *Friedman*, 837 F.2d 48, 48-49 (2d Cir. 1988) with this Sparks **Justice Court** bail  
decision. Of note, Petitioner did not analyze the bail structures, considerations  
or case law utilized by the Second Circuit court in deciding that case, and failed  
to compare or contrast those with the bail structure/considerations/case law at  
play here.

1 While hearsay testimony and documentary exhibits are admissible in  
2 bail proceedings, lawyer statements, "recitations," or arguments  
3 regarding facts not substantiated by testimony or documentary  
4 exhibits do not constitute evidence and should not be considered by  
5 the court.<sup>5</sup> This applies to defense counsel as well as the State: "A  
6 fundamental legal and ethical rule is that neither the prosecution  
7 nor the defense may argue facts not in evidence."<sup>6</sup> Requiring defense  
8 attorneys to adhere to this fundamental legal and ethical rule does  
9 not impinge or implicate a criminal defendant's right to effective  
10 assistance of counsel.<sup>7</sup> This means that prosecutors and defense

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12 <sup>5</sup> *Jain v. McFarland*, 109 Nev. 465, 475-76, 851 P.2d 450, 457 (1993)  
13 ("Arguments of counsel are not evidence and do not establish the facts of  
14 the case"); *Klein v. State*, 105 Nev. 880, 884, 784 P.2d 970, 973 (1989)  
15 (prosecutor's comments were not improper when he reminded the jury that it  
16 had been instructed that "nothing counsel might say  
17 during the trial was to be considered as evidence in the case"); *Campania  
18 Management Co. v. Rooks, Pitts & Poust*, 290 F.3d 843, 853 (7th Cir. 2002)  
19 ("[I]t is universally known that statements of attorneys are not evidence");  
20 *Scott v. State*, 922 So. 2d 1024, 1026-27 (Fla. Dist. Ct. App. 2006) ("it is  
21 well-settled that '[r]epresentations by an attorney for one of the parties  
22 regarding the facts ... do[es] not constitute evidence'") (quoting *Eight  
23 Hundred, Inc. v. Department of Revenue*, 837 So.2d 574, 576 (Fla. 1st DCA  
24 2003)); *United States v. Stevens*, 500 F.3d 625, 628 (7th  
25 Cir.2007)("[A]rguments in a ... brief, unsupported by documentary evidence,  
26 are not evidence"); *Ner Tamid Congregation of N. Town v. Krivoruchko*, 620 F.  
Supp. 2d 924, 928-929 (N.D. Ill. 2009) "the claim...was not supported by  
affidavit, and a lawyer's unsupported statements in briefs are not  
evidence").

<sup>6</sup> *Morgan v. State*, 134 Nev. 200, 215, 416 P.3d 212, 227 (2018). See also  
*Glover v. District Court*, 125 Nev. 691, 705, 220 P.3d 684, 694 (2009) ("The  
prohibition against arguing facts not in evidence applies to the prosecution  
and the defense alike. '[I]t is improper for either the prosecutor or  
defense counsel to "ma[ke] statements as to facts not proven" or to put his  
or her "personal knowledge and belief ... on the scales."'") (quoting *United  
States v. Hoffman*, 964 F.2d 21, 24 (D.C. Cir. 1992)).

<sup>7</sup> *Morgan*, 134 Nev. at 215-216, 416 P.3d at 227 (Rejecting defendant's  
argument "that his constitutional rights to effective assistance of counsel  
were denied when the court demanded that his counsel correct [his]  
misstatement" of fact during closing argument; noting that the right to  
effective assistance of counsel does not include attorney conduct that does

1 counsel alike must support their positions with testimony or  
2 documentary evidence, and confine their arguments to facts and  
3 inferences grounded in such evidence.

4       Petitioner's Writ(s) allege, in conclusory fashion, that  
5 Petitioner presents a very low risk of flight, which "is supported by  
6 the evidence that [Petitioner] has family in the area, ties to the  
7 community, and employment. He can live with his mother in Reno if  
8 released, so he has a place to live that is not with the alleged  
9 victim." Pet. Writ at 14:11-14. However, Petitioner ignores the  
10 glaring reality that NO EVIDENCE WHATSOEVER was presented at the  
11 hearing regarding any of these details. No witnesses were called by  
12 Petitioner to establish these items, nor were any documents  
13 submitted. In fact, the State stipulated, as it appeared from the  
14 NPRA and discussion with Detective May, that Petitioner worked at  
15 Tesla. Petitioner provided no evidence in this regard. As  
16 Petitioner's mother did not testify at the hearing nor submit an  
17 affidavit, no one knows whether Petitioner can reside at her  
18 residence. Nor can we inquire whether she visits regularly with her  
19 grandchildren (one of whom is alleged to be Petitioner's sexual  
20 assault victim), or otherwise. Basing Petitioner's pretrial  
21 conditions on an offer of proof from Petitioner's counsel could be  
22 dangerous and have disastrous consequences; not to mention, it would  
23 vitiate the balanced aims of *Valdez-Jimenez* in wholly failing to  
24 protect the State's aforementioned compelling interests. Moreover,

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26 not "'accord with the traditions of the adversary factfinding process'")  
(quoting *Herring v. New York*, 422 U.S. 853, 857, 95 S.Ct. 2550 (1975)).

1 Petitioner presented nothing to rebut the State's evidence that  
2 Petitioner was a danger to victims and the community. The State  
3 provided evidence, through testimony of the victim's  
4 mother/Petitioner's wife, that Petitioner was a danger to A.I., her  
5 family, and those similarly situated, as this was a crime committed  
6 on a child, while the Petitioner was in a position of trust relative  
7 to A.I. Petitioner offered nothing to rebut that testimony, aside  
8 from argument.

9 As a result, Petitioner's Writs appear to be a thinly veiled  
10 appeal of a non-final decision by a Justice Court, made because  
11 Petitioner is unhappy with the outcome he received. *Valdez-Jimenez*  
12 was appropriately applied in this case. Petitioner did not present  
13 any evidence whatsoever in support of his request for an own  
14 recognizance release at the hearing. Nothing, aside from argument of  
15 counsel, was provided by Petitioner to aid Justice Longley in her  
16 decision regarding Petitioner's pretrial custody status.

17 This Court would face a never-ending slew of Pretrial Writs if  
18 they were filed in every instance where a defendant was unhappy with  
19 a bail decision made by a Justice Court. Nowhere in Petitioner's  
20 Writ(s) did he identify where, or how, Justice Longley abused her  
21 discretion in analyzing the *Valdez-Jimenez* factors in determining  
22 bail. Nothing indicates that Justice Longley acted arbitrarily or  
23 capriciously in setting bail at \$50,000.00. Rather, Justice Longley  
24 considered the nature of the charge, the possible penalty, harm to  
25 the victim and the community, criminal history, and the defendant's  
26 financial means, along with other considerations. It is telling as to

1 Justice Longley's thought process (that it was not arbitrary or  
2 capricious) that **she**, and **not** Petitioner's counsel, inquired into the  
3 assets of Petitioner in determining appropriate pretrial conditions.  
4 Justice Longley also inquired of the State's witness/victim's  
5 mother/Petitioner's wife regarding her and Petitioner's impending  
6 divorce to gain further insight into Petitioner's financial  
7 capabilities.

8 Also bearing on Justice Longley's appropriate analysis of the  
9 Valdez-Jimenez considerations, Justice Longley did not agree with the  
10 State's request to increase bail to \$150,000.00, noting that  
11 "\$150,000.00 bail ...would be excessive in this case...". Pet. Exh. 6.  
12 Justice Longley did not blindly adhere to the State's recommendation  
13 at Petitioner's expense; rather, after Petitioner's requested prompt,  
14 "full-blown adversarial hearing," Justice Longley determined that in  
15 light of all the factors, the State proved by clear and convincing  
16 evidence that bail was necessary to ensure Petitioner's attendance at  
17 Court and to protect the safety of the victims and the community.

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1       **IV.   CONCLUSION**

2       For all of the foregoing reasons, the State respectfully requests  
3       that this Court deny both of Petitioner's Writs in their entirety.

4               AFFIRMATION PURSUANT TO NRS 239B.030

5               The undersigned does hereby affirm that the preceding  
6       document does not contain the social security number of any person.

7               Dated this 19th day of October, 2020.

8  
9                               CHRISTOPHER J. HICKS  
10                              District Attorney  
                              Washoe County, Nevada

11                             By Brittany Bishop  
12                               BRITTANY BISHOP  
13                               13745  
                              DEPUTY DISTRICT ATTORNEY

1                                    CERTIFICATE OF SERVICE BY E-FILING

2                    I certify that I am an employee of the Washoe County  
3 District Attorney's Office and that, on this date, I electronically  
4 filed the foregoing with the Clerk of the Court by using the ECF  
5 system which will send a notice of electronic filing to the  
6 following:

7                    Jay Slocum  
8                    Deputy Public Defender

9                    Evelyn Grosenick  
10                   Deputy Public Defender

11  
12                   DATED this 19<sup>th</sup> day of October, 2020.

13  
14  
15                   /s/ Destinee Allen  
16                   DESTINEE ALLEN



1 CODE 3795  
2 EVELYN GROSENICK SBN 12217  
3 WASHOE COUNTY PUBLIC DEFENDER  
4 EGROSENICK@WASHOECOUNTY.US  
5 350 S. CENTER STREET, 5TH FLOOR  
6 RENO, NV 89501  
7 (775) 337-4800  
8 Attorney for Petitioner

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
10  
11 IN AND FOR THE COUNTY OF WASHOE

12 TRAVIS BISH,

13 Petitioner,

14 vs.

CASE NO. CR20-2911

15 THE JUSTICE COURT FOR

DEPT. NO. 9

16 SPARKS TOWNSHIP, THE HON.

17 JESSICA LONGLEY, BY AND

18 THROUGH REAL PARTY IN

19 INTEREST, THE STATE OF NEVADA,

20 Respondents.

21 \_\_\_\_\_/

22 **REPLY IN SUPPORT OF EMERGENCY PETITION FOR WRIT OF**  
23 **HABEAS CORPUS, OR IN THE ALTERNATIVE, PETITION FOR WRIT OF**  
24 **MANDAMUS; AND REQUEST FOR EMERGENCY HEARING**  
25 **MEMORANDUM OF POINTS AND AUTHORITIES**

26 The State argues that Mr. Bish did not provide any evidence in support of  
his request for an own-recognizance release. State's Response 7:18-20. The State's  
argument fails to recognize that it is the *State's burden* to show by clear and  
convincing evidence why the conditions it seeks, including money bail, are the

1 least restrictive conditions that will reasonably ensure the defendant's return to  
2 court and the safety of the community. *Valdez-Jimenez v. Eighth Judicial District*  
3 *Court*, 136 Nev. Adv. Op. 20, 460 P.3d 976, 987 (2020).

4 A bail hearing is not constrained by traditional rules of evidence. NRS  
5 47.020(3)(b) (noting that the provisions of Title 4 of the NRS governing witnesses  
6 and evidence "do not apply to . . . Proceedings with respect to release on bail.").  
7 Parties at bail hearings frequently rely on proffers. *See, e.g., United States v.*  
8 *LaFontaine*, 210 F.3d 125, 131 (2d Cir. 2000) ("As in the case of other pretrial  
9 proceedings such as arraignments and probable cause determinations for  
10 warrants, bail hearings are typically informal affairs, not substitutes for trial or  
11 even for discovery. Often the opposing parties simply describe to the judicial officer  
12 the nature of their evidence; they do not actually produce it." (internal quotation  
13 marks and citations omitted)). However, "while the informality of bail hearings  
14 serves the demands of speed, the magistrate or district judge must also ensure the  
15 reliability of the evidence, by selectively insisting upon the production of the  
16 underlying evidence or evidentiary sources where their accuracy is in question."  
17 *Id.* A reviewing court has found no error with a magistrate's reliance on a proffer  
18 to which no objection was made. *See, e.g., United States v. Martir*, 782 F.2d 1141,  
19 1147 (2d Cir. 1986).

20 A stipulation to a fact negates the need to present evidence supporting that  
21 fact. *Gottwals v. Rencher*, 60 Nev. 35, 98 P.2d 481, 484 (1940) ("There is nothing  
22 unusual in such a stipulation of fact dispensing with formal proof. On the  
23 contrary, it is common practice to dispense with such proof by an agreed statement  
24 of facts."). Lastly, parties may argue reasonable inferences from facts. *Glover v.*  
25 *Eighth Judicial Dist. Court of State ex rel. Cty. of Clark*, 125 Nev. 691, 705, 220  
26 P.3d 684, 694 (2009), *as corrected on denial of reh'g* (Feb. 17, 2010) ("Because of the

1 State's burden of proving guilt beyond a reasonable doubt, defense attorneys must  
2 be permitted to argue all reasonable inferences from the facts in the record."  
3 (internal quotation marks and citation omitted)).

4 The State argues that no evidence was presented in support of Petitioner's  
5 arguments that: 1) he presents a very low risk of flight, 2) has family in the area,  
6 3) ties to the community, 4) employment, and (5) a place to live with his mother in  
7 Reno if released, which would not be with the alleged victim. State's Resp. 9:4-9.

8 The low risk of flight is supported by the NPRA, which is part of the record,  
9 and it was a finding of fact made by Judge Longley. *See* NPRA, Ex. 4 to Petition;  
10 Video of Sept. 18, 2020 Bail Hearing ("Video"), Ex. 6 to Petition (statements from  
11 Judge Longley that "due to his low risk of flight" and "it appears that there is a  
12 very low risk of flight, there is still that risk of flight due to the nature of the  
13 charges").

14 Counsel for Mr. Bish made a proffer that Mr. Bish could live with his  
15 mother in Reno if released. *See* Video, Ex. 6 to Petition. Further, Judge Longley  
16 had an entire conversation with Mr. Bish about where he would live if released. *Id.*  
17 A defendant has the right to testify at the bail hearing. *Valdez-Jimenez*, 460 P.3d  
18 at 987. The State never challenged the proffer or called into question its accuracy.  
19 *See* Video, Ex. 6 to Petition. The Court discussed the imposition of a no-contact  
20 order between Mr. Bish and Ms. Johnson and the children. *Id.* No one, including  
21 the State and Ms. Johnson, alleged that Ms. Johnson and Mr. Bish's mother live  
22 together or that Mr. Bish living with his mother would also force him to violate the  
23 no-contact order. *Id.*

24 The State stipulated to Mr. Bish's employment with Tesla, negating the  
25 need for Mr. Bish to submit evidence to support that fact. State's Resp. 9:13-15.  
26 However, Mr. Bish's employment was verified by Pretrial Services, which, again, is

1 part of the record. *See* NPRA, Ex. 4 to Petition. Lastly, the arguments that Mr.  
2 Bish has ties to the community and family in the area are reasonable inferences  
3 from facts in the record, specifically that he is employed and has children and a  
4 mother living in Reno.

5 The argument that a petition for a writ is an inappropriate vehicle to seek  
6 the relief requested herein lacks merit and the State cites no authority in support  
7 of its position. The Nevada Supreme Court has held that a writ of habeas corpus is  
8 the appropriate means of challenging excessive bail or conditions of release. *See Ex*  
9 *parte Douglas*, 25 Nev. 425 (1900); *Ex parte Jagles*, 44 Nev. 370 (1921); *Ex parte*  
10 *Malley*, 50 Nev. 248 (1927); *Ex parte Wheeler*, 81 Nev. 495 (1965); *Fogliani*, 82 Nev.  
11 at 303–04 (“This Court has repeatedly held that a person should be discharged via  
12 the writ of habeas corpus where it is clear and undisputed that he is held by  
13 reason of the commission of an act which the law does not prohibit or penalize.”).

14 **AFFIRMATION PURSUANT TO NRS 239B.030**

15 The undersigned does hereby affirm that the preceding document does not  
16 contain the social security number of any person.

17 DATED this 21<sup>st</sup> day of October, 2020.

18 JOHN L. ARRASCADA  
19 Washoe County Public Defender

20 /s/ EVELYN GROSENICK  
21 EVELYN GROSENICK  
22 Chief Deputy Public Defender  
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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date electronically filed the foregoing with the Clerk of the Court by using the ECF system and provided notice to the following interested parties:

Deputy District Attorney Brittany Bishop  
Via Email and ECF

Sparks Justice Court, The Honorable Jessica Longley  
By and Through Counsel, Washoe County District Attorney's Office  
And to the Court via inter office mail

DATED this 21st day of October, 2020.

/s/ Linda Gray  
LINDA GRAY

1 CODE: 3860  
2 EVELYN GROSENICK SBN 12217  
3 WASHOE COUNTY PUBLIC DEFENDER  
4 350 S. CENTER STREET, 5TH FLOOR  
5 EGROSENICK@WASHOECOUNTY.US  
6 RENO, NV 89501  
7 (775) 337-4800  
8 Attorney for Petitioner

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
10  
11 IN AND FOR THE COUNTY OF WASHOE

12 TRAVIS BISH,

13 Petitioner,

14 vs.

CASE NO. CR20-2911

15 THE JUSTICE COURT FOR

DEPT. NO. 9

16 SPARKS TOWNSHIP, THE HON.

17 JESSICA LONGLEY, BY AND

18 THROUGH REAL PARTY IN

19 INTEREST, THE STATE OF NEVADA,

20 Respondents.

21  
22 REQUEST FOR SUBMISSION

23 The Petitioner, having filed an Emergency Petition for Writ of Habeas  
24 Corpus, Or in the Alternative, Petition for Writ of Mandamus; and Request for  
25 Emergency Hearing on October 6, 2020, with State filing its Response on October  
26 19, 2020, and Petitioner filing his Reply on October 21, 2020,

///

///

1 IT IS HEREBY REQUESTED that all motions, pleadings and oral argument  
2 be submitted to the Court for decision.

3 **AFFIRMATION PURSUANT TO NRS 239B.030**

4 The undersigned does hereby affirm that the preceding document  
5 does not contain the social security number of any person.

6 DATED this 27th day of October, 2020.

7  
8 JOHN L. ARRASCADA  
Washoe County Public Defender

9  
10 /s/ EVELYN GROSENICK  
11 EVELYN GROSENICK  
Chief Deputy Public Defender  
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date electronically filed the foregoing with the Clerk of the Court by using the ECF system and provided notice to the following interested parties:

Deputy District Attorney Brittany Bishop  
Via ECF

Sparks Justice Court, The Honorable Jessica Longley  
By and Through Counsel, Washoe County District Attorney's Office  
Courtesy Copy to the Court via inter office mail

DATED this 27th day of October, 2020.

/s/ Linda Gray  
LINDA GRAY



1 CODE: 3370  
2  
3  
4

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
6 IN AND FOR THE COUNTY OF WASHOE  
7

8 TRAVIS BISH,

Case No.: CR20-2911  
Dept. No.: 9

Petitioner,

9  
10 v.

11 THE JUSTICE COURT FOR SPARKS  
12 TOWNSHIP, THE HON. JESSICA LONGLEY, BY  
13 AND THROUGH REAL PARTY IN INTEREST,  
14 THE STATE OF NEVADA,

Respondent.  
15  
16

17 **ORDER DENYING EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS, OR IN**  
18 **THE ALTERNATIVE, PETITION FOR WRIT OF MANDAMUS; AND REQUEST FOR**  
19 **EMERGENCY HEARING**

20 The Court is in receipt of Petitioner TRAVIS BISH's (hereinafter "Petitioner") *Emergency*  
21 *Petition for Writ of Habeas Corpus, or in the Alternative, Petition for Writ of Mandamus; and*  
22 *Request for Emergency Hearing* filed October 6, 2020. Respondent THE STATE OF NEVADA  
23 (hereinafter "the State") filed its *Response to Petitioner's Emergency Petition for Writ of Habeas*  
24 *Corpus, Or in The Alternative, Petition for Writ of Mandamus, And Request for Emergency Hearing*  
25 on October 19, 2020. Petitioner thereafter filed a *Reply in Support of Emergency Petition for Writ of*  
26 *Habeas Corpus, or in the alternative, Petition for Writ of Mandamus; and Request for Emergency*  
27 *Hearing Memorandum of Points and Authorities* on October 21, 2020.

28 Upon review of the pleadings, this Court finds a hearing on this Petition is not necessary and  
the Court will therefore decide the instant Petition on the pleadings filed herein.

1 BACKGROUND

2 On or about September 14, 2020, Petitioner was arrested and booked on one count of Sexual  
3 Assault of a Child Under Age 14, a Category A felony. *Resp.* p. 2:2-5. Thereafter, on or about  
4 September 15, 2020, Sparks Justice of the Peace Jessica Longley set cash bail for Petitioner at  
5 \$30,000.00, bondable. *Id.* p. 2:5-9. On or about September 16, 2020, Deputy District Attorney  
6 Brittany Bishop filed a Complaint against Petitioner which alleged the same charge. More  
7 specifically, the Complaint alleges Petitioner “sexually assaulted his nine-year-old adopted  
8 daughter, A.I., by digital penetration of her vagina.” *Id.* p. 2:9-12. On or about September 17, 2020,  
9 Petitioner was arraigned. Petitioners counsel requested a continuance to address Petitioner’s bail  
10 pursuant to *Valdez-Jimenez*. The continuance was granted, and a bail hearing was held on  
11 September 18, 2020. At the time of the bail hearing, the State requested a bail increase to  
12 \$150,000.00, bondable. In response, the Public Defender’s office gave argument and requested that  
13 Petitioner be released on his own recognizance. *Id.* p. 3:12-18.

14 The Court thereafter rendered its decision finding that a \$150,000.00 bail would be  
15 excessive in this case due to the Petitioners “low risk of flight . . . low criminal history and  
16 financial resources.” *Mot.* p. 7:10-13. However, the Court determined while there was a low risk of  
17 flight, “there is still risk of flight due to the nature of the charges, and if convicted it is a mandatory  
18 prison offense with a minimum of thirty-five years and a maximum of lifetime in prison.” *Id.* p.  
19 7:14-17. The Court subsequently raised Petitioners bail to \$50,000.00 bondable. As of the filing of  
20 the *Petition*, Petitioner remained in custody on a \$50,000.00 bail.

21 Petitioner thereafter filed his *Emergency Petition for Writ of Habeas Corpus, or in the*  
22 *Alternative, Petition for Writ of Mandamus; and Request for Emergency Hearing*. Upon thorough  
23 review of the record and the pleadings before the Court, the Court hereby DENIES Petitioners  
24 *Emergency Petition for Writ of Habeas Corpus, or in the Alternative, Petition for Writ of*  
25 *Mandamus; and Request for Emergency Hearing*.

26 STANDARD OF REVIEW

27 “A pretrial release decision is a matter within the sound discretion of the trial court.”  
28 *Valdez-Jimenez v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 136 Nev. Adv. Op. 20, 460  
P.3d 976, 984 (2020).

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1 NRS 34.360 provides that “[e]very person unlawfully committed, detained, confined or  
2 restrained of his or her liberty, under any pretense whatever, may prosecute a writ of habeas corpus  
3 to inquire into the cause of such imprisonment or restraint.” Pursuant to NRS 34.500(7), a Petitioner  
4 who is in custody may be discharged in any number of cases.<sup>1</sup> If there is no legal cause for such  
5 imprisonment or continuation thereof, the Judge shall discharge the Petitioner from such  
6 imprisonment. NRS 34.480.

7 Furthermore, a writ of mandamus is generally available only in “cases where there is not a  
8 plain, speedy and adequate remedy in the ordinary course of law.” NRS 34.170. A writ of  
9 mandamus is appropriate “to compel the performance of an act that the law requires as a duty  
10 resulting from an office, trust, or station or to control an arbitrary or capricious exercise of  
11 discretion.” *Valdez-Jimenez v. Eighth Judicial Dist. Court in & for Cty. Of Clark*, 136 Nev. Adv.  
12 Op. 20 (2020), citing *Int’l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179  
13 P.3d 556, 558 (2008); NRS 34.160. The Petitioner bears the burden of demonstrating that  
14 extraordinary relief is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d  
15 840, 844 (2004).

### 16 DISCUSSION

17 First, Petitioner argues that the Sparks Justice Court set Petitioner’s bail in an amount he is  
18 unable afford. Petitioner further argues the bail amount of \$50,000.00 constitutes a *de facto*  
19 detention order. *Mot.* p. 9:19-22. Petitioner contends the State “failed to prove by clear and  
20 convincing evidence that preventive detention is the least restrictive means of reasonably assuring  
21 Mr. Bish’s return to the Court and the safety of the community.” *Id.* p. 11:15-19.

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25 <sup>1</sup> NRS 34.500(7): If it appears on the return of the writ of habeas corpus that the petitioner is in custody by virtue of  
26 process from any court of this State, or judge or officer thereof, the petitioner may be discharged in any one of the  
27 following cases:

28 (7) Where the petitioner has been committed or indicted on a criminal charge, including a misdemeanor, except  
misdemeanor violations of chapters 484A to 484E, inclusive, of NRS or any ordinance adopted by a city or county to  
regulate traffic, without reasonable or probable cause.

1 The State, however, asserts Judge Longley did not abuse her discretion in concluding that a  
2 \$50,000.00 bail is the least restrictive alternative to satisfy the State's interests. *Opp'n*. p. 6:3-6.

3 Petitioner argues the State did not meet its burden in this case. Specifically, Petitioner  
4 argues that Judge Longley concluded "there is a very low risk of flight." *Mot.* p. 14:11. Petitioner  
5 comes now asserting that he is a low flight risk as he has family in the area, ties to the community,  
6 employment, and a place to live if released. Additionally, Petitioner asserts one of his biological  
7 children currently resides in Reno. *Id.* p. 14:10-16. Moreover, Petitioner contends he has no prior  
8 arrests relating to anything sexually motivated or for any crimes against children. Petitioner further  
9 contends the allegation in this case is of a single incident and further, no evidence of abuse against  
10 the two other children in the household was presented. *Id.* p. 15:1-15.

11 The State posits no evidence of Petitioner's instant allegations were presented at the time of  
12 the bail hearing. The State further contends Petitioner presented nothing to rebut the State's  
13 presented evidence that Petitioner was a danger to victims and the community at the time of the bail  
14 hearing. *Opp'n*. p. 10:1-3. Moreover, Petitioner did not provide evidence in support of his request  
15 for an own recognizance release.

16 *Valdez-Jimenez* identifies the State's interests as twofold: (1) ensuring the defendant's  
17 presence at further proceedings; and (2) protecting victims of the defendant, as well as the  
18 community at large.

19 In this case, the record is clear. The morning following his arrest Petitioner had the  
20 opportunity to address bail. However, Petitioner requested to continue the hearing to the following  
21 day. At the time of the bail hearing, the State and two witnesses appeared. Petitioner was  
22 represented by counsel and had the opportunity to call witnesses and present evidence. Following  
23 the adversarial hearing, "Justice Longley utilized the requisite *Valdez-Jimenez* considerations and  
24 concluded that the State had proven by clear and convincing evidence that bail was necessary, and  
25 that setting Petitioner's bail at \$50,000.00, bondable was the least restrictive alternative to achieve  
26 those aims." *Id.* p. 7:9-11.

27 In this case, the Court finds there is no indication Judge Longley acted arbitrarily or  
28 capriciously when setting Petitioner's bail at \$50,000.00, bondable. The Court finds Judge Longley

1 considered all relevant factors pursuant to *Valdez-Jimenez* when determining Petitioner's bail  
2 amount. The Court finds Judge Longley determined Petitioner's bail amount following a "full-blown  
3 adversarial hearing." Specifically, the Court notes while the State requested an increase to  
4 \$150,000.00 bail, Judge Longley found that \$150,000.00 bail would be excessive in this case. Judge  
5 Longley ultimately concluded in light of the factors before her, the State had proved bail was  
6 necessary in this case to ensure Petitioner's future Court attendance in addition to protecting the  
7 safety of the victims and the community. Finding such, the Court hereby denies Petitioner's writ.

8 Accordingly, and good cause appearing, the Court's order is as follows:

9 IT IS HEREBY ORDERED that Petitioner TRAVIS BISH's *Emergency Petition for Writ of*  
10 *Habeas Corpus, or in the Alternative, Petition for Writ of Mandamus; and Request for Emergency*  
11 *Hearing* is DENIED.

12 IT IS SO ORDERED.

13 DATED: This 3<sup>rd</sup> day of December, 2020.

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16 DISTRICT JUDGE  
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[NONE]

EVELYN GROSENICK, ESQ. for TRAVIS BISH  
BRITTANY BISHOP, ESQ for STATE OF NEVADA

Bill

## Judicial Assistant

1 CODE NO. 2515  
2 WASHOE COUNTY PUBLIC DEFENDER  
3 EVELYN GROSENICK, State Bar Number 12217  
4 KATHRYN REYNOLDS, State Bar Number 10955  
5 350 South Center Street, 5th Floor  
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8 egrosenick@washoecounty.us  
9 kreynolds@washoecounty.us  
10 Attorney for Defendant

11 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

12 IN AND FOR THE COUNTY OF WASHOE

13 TRAVIS BISH,

14 Petitioner,

15 vs.

16 Case No. CR20-2911

17 THE JUSTICE COURT FOR SPARKS  
18 TOWNSHIP, THE HON. JESSICA  
19 LONGLEY, BY AND THROUGH REAL  
20 PARTY IN INTEREST, THE STATE  
21 OF NEVADA,

22 Dept. 9

23 Defendant.

24 NOTICE OF APPEAL

25 Petitioner, Travis Bish, appeals to the Supreme Court of Nevada from the Order  
26 Denying Emergency Petition for Writ of Habeas Corpus, or in the alternative, Petition  
for Writ of Mandamus; and Request for Emergency Hearing entered on December 3,  
2020.

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1       The undersigned hereby affirms, pursuant to NRS 239B.030, that this  
2 document does not contain the social security number of any person.

3 DATED: December 30th, 2020

4                               JOHN L. ARRASCADA  
5                               WASHOE COUNTY PUBLIC DEFENDER

6                               By: /s/ Evelyn Grosenick  
7                                       EVELYN GROSENICK, Chief Deputy

8                               By: /s/ Kathryn Reynolds  
9                                       KATHRYN REYNOLDS, Deputy



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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date I forwarded a true copy of the foregoing document addressed to:

BRITTANY BISHOP, ESQ  
Deputy  
Washoe County District Attorney's Office  
(E-flex)

JENNIFER P. NOBLE  
Chief Appellate Deputy  
Washoe County District Attorney's Office  
(E-flex)

AARON D. FORD  
Attorney General State of Nevada  
100 N. Carson Street  
Carson City, Nevada 89701

DATED this 30<sup>th</sup> day of December, 2020.

/s/ Kathryn Reynolds  
KATHRYN REYNOLDS