IN THE SUPREME COURT OF THE STATE OF NEVADA

JERRY RILEY,

Appellant,

vs.

THE STATE OF NEVADA
DEPARTMENT OF PUBLIC SAFETY,

Respondent.

Supreme Court Case No. 79389
District Court Case No. CV19-00441

RESPONDENT'S ANSWERING BRIEF

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ROUTING STATEMENT

The Nevada Supreme Court does not need to retain this matter because it is not presumptively assigned to the Nevada Supreme Court pursuant to Rule 17(a) of the Nevada Rules of Appellate Procedure (NRAP). This matter does not raise questions of statewide public importance or first impression. *See* NRAP 17(a)(10)-(11). However, as provided in the Docketing Statement filed on October 23, 2019, the pending proceeding raises the same issues as those raised in the consolidated *Blewett v. State, Department of Public Safety*, No. 77180 cases. The arguments contained in the Opening Brief are fundamentally identical to those raised in the *Blewett* cases that are currently being handled by the Nevada Supreme Court.

STATEMENT OF THE ISSUE

Was Appellant Jerry Riley treated disparately to similarly situated litigants petitioning for relief from the duty to register as a sex offender in violation of the Equal Protection Clause?

SUMMARY OF THE ARGUMENT

This appeal involves challenges to denials of Riley's Petition to terminate his obligation to register as a sex offender. Riley brings this appeal in an attempt to require courts to merge statutes from two different and disparate sex offender registration schemes—Megan's Law and the Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. § 16911, et seq. (the Adam Walsh Act) (enacted as

NRS Chapter 179D). Riley takes the position that courts should intentionally misapply the law going forward and require the use of the Megan's Law tiering statute in conjunction with the Adam Walsh Act relief from registration statute because this merger erroneously occurred in a handful of cases in 2016. Such a ruling would negate the Legislature's intent in passing the Adam Walsh Act to replace Megan's Law, would run afoul of the rules of statutory construction, and be contrary to this Court's decision in *State Dep't of Pub. Safety v. Neary*, 422 P.3d 1232 (Nev. 2018) (unpublished). Accordingly, this Court should affirm the District Court's decision in this case.

STATEMENT OF THE CASE

Riley filed his Petition for Termination of Duty to Register in the Second Judicial District Court, Washoe County on February 25, 2019, arguing that the Adam Walsh Act version of NRS 179D.490 applies to him and provides him with relief from registration as a sex offender. AA 1-47. While his counsel raised equal protection arguments in other cases prior to the filing of Riley's petition, Riley did not raise any equal protection arguments in his Petition. *Id*.; *see Blewett v. State, Department of Public Safety*, No. 77180 cases.

On April 17, 2019, the State of Nevada, Department of Public Safety (DPS) responded to the Petition, filing a Motion to Dismiss. *Id*. at 50-60. Riley subsequently filed an Opposition to the Motion to Dismiss the Petition for

Termination of Duty to Register. *Id*. at 61-74. Therein, he also failed to raise any equal protection arguments. *Id*. DPS then filed a reply in support of its Motion to Dismiss. *Id*. at 75-82.

On July 8, 2019, the District Court entered an Order Granting the Motion to Dismiss, concluding that Riley is a tier 3 sex offender who is required to register for at least 25 years but that he only began registering in 2000 and is currently noncompliant with his registration requirements. *Id*. at 83-88. Riley now appeals.

STATEMENT OF FACTS

I. History of AB 579

Prior to 2007, Nevada had adopted and implemented Megan's Law for the registration of sex offenders. During the 2007 Legislative Session, Nevada passed Assembly Bill (AB) 579, which made changes to Nevada's sex offender registry requirements in order to conform to the standards of the Adam Walsh Act and SORNA, the federal Sex Offender Registration and Notification Act, 42 U.S.C. § 16901 *et seq. See* 2007 Nevada Laws C. 485 (collectively referred to as the Adam Walsh Act).

The change from Megan's Law to the Adam Walsh Act resulted in significant revisions to the sex offender registration system. While under both laws sex offenders are tiered into different groups that affect how the offenders are supervised, under Megan's Law the sex offender tier designations were based on

the determination of a Tier Assessment Panel in consideration of various subjective factors that assessed the offender's likelihood to reoffend. *See* NRS 179D.730 (2001). Alternatively, under the terms of the Adam Walsh Act, sex offender tier levels are prescribed by statute—based upon the crime for which the individual was convicted. *See* NRS 179D.113 (2007) through NRS 179D.117 (2007).

Also, under the 2007 Adam Walsh Act, the ability to petition for relief from the obligation to register as a sex offender would change. Under the Megan's Law version of NRS 179D.490 (2001), an eligible offender who had not committed certain offenses and had *inter alia* registered for 15 consecutive years in Nevada could petition the district court for an order terminating his or her obligation to register as a sex offender. Under the Adam Walsh Act, in the case of a Tier II offender, the offender must register for 25 years. NRS 179D.490(2)(b) (2007). In the case of a Tier III offender, lifetime registration is required and relief may be sought only after 25 consecutive years of registration if adjudicated delinquent. NRS 179D.490(2)(c) (2007); NRS 179D.490(3)(b) (2007).

The amendments to the law were to have gone into effect on July 1, 2008. However, implementation of AB 579 was stayed by the Federal Court pending review of its constitutionality. *Am. Civil Liberties Union of Nev. v. Cortez Masto,* 719 F. Supp. 2d 1258 (D. Nev. 2008). The Federal district court imposed a permanent injunction against application of the law finding it to violate the *Ex Post*

Facto and Double Jeopardy clauses of the United States Constitution. The State appealed. Ultimately, on February 10, 2012, the Ninth Circuit Court of Appeals determined that the application of AB 579, as drafted, was constitutional. *ACLU v. Masto*, 670 F.3d 1046 (9th Cir. 2012).

Following the lifting of the federal injunction and just prior to the planned implementation of the Adam Walsh Act on February 1, 2014, the provisions of the new law were again stayed; this time by this Court in the case of *Does 1-24 v. Eighth Judicial District Court*, Case No. 64890. On January 22, 2016, this Court issued an order denying the emergency petition and once again allowed implementation of AB 579 to proceed. *See Does 1-24 v. Eighth Judicial District Court*, No. 64890, 2016 WL 374956 (Nev. Jan. 22, 2016).

Subsequently, on June 22, 2016, various sex offenders submitted a First Amended Complaint in Eighth Judicial District Court Case No. A-14-694645-C ("*Does 1-17*") and sought an Emergency Motion. On July 1, 2016, the Nevada Supreme Court temporarily enjoined the enforcement of the Adam Walsh Act by the State. However, on April 27, 2018, the Nevada Supreme Court again unenjoined AB 579. *See Does 1-17 v. Eighth Judicial Dist. Court*, No. 70704, 2018 WL 2021587, at *1 (Nev. Apr. 27, 2018). Accordingly, the Adam Walsh Act is currently in effect.

/ / /

II. Appellant's Registration History.

On or about March of 1983, Riley was convicted of attempted lewdness with a minor under the age of 14. AA 1-8. This conviction placed Riley under an obligation to register his presence within the State of Nevada. Riley provides that he registered for the first time with the Nevada Sex Offender Registry in 1984. *Id*. He argues that he has been continually registering since that date and has now been registered for 34 consecutive years. *Id*.

However, the Sex Offender Registry did not exist in 1984. *See* NRS Chapter 179D. The 1994 Jacob Wetterling Crimes Against Children and Sexually Violent Offender Act (Megan's Law) required states to implement a sex-offender registration program for the first time. This law was enacted in Nevada in 1997, and a statewide registry was thereafter created. *See* SB 325 (1997).

In reality, Riley registered for the first time with the Nevada Sex Offender Registry in June of 2000. AA 59-60. Riley's status with the Registry as of March 11, 2019, was "Failed to Verify/Non-compliant." *Id*. Riley completed his annual verification in 2001, completed his 2002 registration in 2003, timely completed his 2003 and 2004 annual verifications, completed his 2005 registration in 2006, timely completed his 2006 to 2015 annual verifications, completed his 2016 registration in 2017, timely completed his 2017 annual verification, completed his

2018 annual verification, and has failed to complete his December 2018 90-day verification. *Id*. Riley is a Tier 3 sex offender under the Adam Walsh Act. *See id*.

STANDARD OF REVIEW

This Court reviews questions of statutory construction and interpretation de novo. *Slade v. Caesars Entm't Corp.*, 132 Nev. 374, 376, 373 P.3d 74, 75 (2016). "This court avoids statutory interpretation that renders language meaningless or superfluous, and if the statute's language is clear and unambiguous, this court will enforce the statute as written." *Barber v. State*, 131 Nev. 1065, 1068-69, 363 P.3d 459, 462 (2015) (internal quotations and alterations omitted). "A statute must be construed as to give meaning to all of its parts and language, and this court will read each sentence, phrase, and word to render it meaningful within the context of the purpose of the legislation." *Slade*, 132 Nev. at 376, 373 P.3d at 75 (internal quotations and alterations omitted). Additionally, this court interprets "statutes within a statutory scheme harmoniously with one another to avoid an unreasonable or absurd result." *Horizons at Seven Hills v. Ikon Holdings*, 132 Nev. 362, 368, 373 P.3d 66, 70 (2016) (internal quotation omitted).

The district court's factual findings are given deference and will be upheld "unless they are clearly erroneous and not based on substantial evidence." *Int'l Fid. Inc. v. State of Nevada*, 122 Nev. 39, 42, 126 P.3d 1133, 1134-35 (2006). "Substantial evidence is evidence that a reasonable mind might accept as adequate

to support a conclusion." *Whitemaine v. Aniskovich*, 124 Nev. 302, 308, 183 P.3d 137, 141 (2008). However, this Court reviews a district court's conclusions of law de novo. *Grosjean v. Imperial Palace*, 125 Nev. 349, 359, 212 P.3d 1068, 1075 (2009).

LEGAL ARGUMENT

The District Courts in this State have all reached identical conclusions based on accurate assessments of the law—that individuals such as Riley are not entitled to the relief that they seek. *See Blewett v. State, Department of Public Safety*, No. 77180. Because Riley is not entitled to relief under the current statutory scheme—the Adam Walsh Act—he seeks a blending of current and prior law.

Riley seeks a ruling that would require District Courts to allow Petitioners to commingle their Megan's Law tier level with the Adam Walsh Act's relief from registration provisions so that they can be removed from the Nevada Sex Offender Registry. Such a reading would be contrary to the rules of statutory construction and would negate the Legislature's intent in passing the Adam Walsh Act to replace Megan's Law. Contrary to Riley's assertions, the law cannot intentionally be applied piecemeal to provide Riley with relief from his obligation to register as a sex offender. Accordingly, this Court should affirm the District Court's decision in this case on the grounds that Riley failed to meet the statutory requirements to be eligible to obtain relief from his registration requirements.

I. Appellant is not Eligible for Termination of His Obligation to Register as a Sex Offender.

Riley is not entitled to relief from his obligation to register as a sex offender. Accordingly, the District Court's decision should be affirmed.

While Riley may have been a Tier I offender under Megan's Law, he is now a Tier III offenders under the Adam Walsh Act. AA 49. Under the Adam Walsh Act, Tier III offenders are required to register for life, but may seek relief from registration after 25 years if adjudicated delinquent. *See id*. Specifically, the Adam Walsh Act version of NRS 179D.490 (2007) provides, in pertinent part that:

> 2. Except as otherwise provided in subsection 3, the full period of registration is:
>
> (a) Fifteen years, if the offender or sex offender is a Tier I offender;
>
> (b) Twenty-five years, if the offender or sex offender is a Tier II offender; and
>
> (c) The life of the offender or sex offender, if the offender or sex offender is a Tier III offender,
>
> exclusive of any time during which the offender or sex offender is incarcerated or confined.
>
> 3. If an offender or sex offender complies with the provisions for registration:
>
> (a) For an interval of at least 10 consecutive years, if the offender or sex offender is a Tier I offender; or
>
> (b) *For an interval of at least 25 consecutive years, if the offender or sex offender is a Tier III offender* adjudicated delinquent for the offense which required registration as an offender or sex offender,
>
> during which the offender or sex offender is not convicted of an offense for which imprisonment for more than 1 year may be imposed, is not convicted of a sexual offense, successfully completes any periods of supervised

> release, probation or parole, and successfully completes a sex offender treatment program certified by the State or by the Attorney General of the United States, *the offender or sex offender may file a petition to reduce the period of time during which the offender or sex offender has a duty to register* . . . .

(Emphasis added).

Accordingly, under the law in effect, Riley is required to register for life unless he was adjudicated delinquent. Because *inter alia* Riley was not adjudicated delinquent, he fails to meet the statutory requirements for release from his obligation to register as a sex offender under current law.

II. Appellant's Equal Protection Rights Were Not Violated.

In an attempt to circumvent this clear statutory language, for the first time on appeal Riley makes the nonsensical argument that his Megan's Law tiering designation applies to the Adam Walsh Act version of the statute based on Equal Protection principles. Specifically, Riley argues that this Court must allow use of his Megan's Law tier with the Adam Walsh Act relief provision to relieve him from his obligation to register as a sex offender based upon the Equal Protection clauses of the United States and Nevada constitutions and *State Dep't of Pub. Safety v. Neary*, 422 P.3d 1232 (Nev. 2018) (unpublished). Riley argues that because the State allowed for use of the Megan's Law tier with the Adam Walsh Act's relief provisions in a handful of cases in 2016, the State must allow for the blending of the statutory schemes at this time. He contends that the State has made

the arbitrary decision to treat him differently from those identically situated in 2016. However, Riley has failed to properly raise this issue and his equal protection rights have not been violated by the proper application of current law.

In appropriate circumstances, this Court "will review constitutional issues and arguments not raised below." *Beazer Homes Holding Corp. v. Dist. Ct.*, 128 Nev. 723, 729 n.1, 291 P.3d 128, 132 n.1 (2012). This Court may choose to analyze constitutional arguments not raised below sua sponte for plain error. *Hamm v. Arrowcreek Homeowners' Ass'n*, 124 Nev. 290, 300, 183 P.3d 895, 903 (2008).

However, the record in this case is not adequately developed for Riley to raise this new equal protection issue. This Court need not consider a constitutional issue raised for the first time on an inadequate record devoid of the bases for the constitutional argument. *See Hill v. State*, 114 Nev. 169, 178–79, 953 P.2d 1077, 1084 (1998) ("[B]ecause this issue raises a claim of constitutional dimension which, if true, might invalidate Hill's death sentence and 'the record is sufficiently developed to provide an adequate basis for review,' we will address it." (quoting *Jones v. State,* 101 Nev. 573, 580, 707 P.2d 1128, 1133 (1985)); *Hillis v. State*, 103 Nev. 531, 533, 746 P.2d 1092, 1093–94 ("[C]onstitutional questions may be reviewed on an adequate record despite failure to raise the issue below."), *overruled on other grounds by Adam v. State*, 127 Nev.

601, 261 P.3d 1063 (2011). Because of the failure to provide an adequate record, this Court should decline to consider these new arguments.

However, should this Court decide to consider this constitutional argument, it must do so under a plain error standard. *See Hamm*, 124 Nev. at 300, 183 P.3d at 903. "[P]lain error is error which either had a prejudicial impact on the verdict when viewed in context of the trial as a whole or seriously effects the integrity or public reputation of the judicial proceedings." *Parodi v. Washoe Medical Ctr.,* 111 Nev. 365, 368, 892 P.2d 588, 590 (1995) (quotations and citations omitted). To be plain, an error must be so unmistakable that it is apparent from a casual inspection of the record. *Patterson v. State,* 111 Nev. 1525, 1530, 907 P.2d 984, 987 (1995). There was no plain error in properly applying the law in this case.

Both the United States and the Nevada Constitutions' guarantee the right to equal protection. *Malfitano v. Cty. of Storey By & Through Storey Cty. Bd. of Cty. Commissioners*, 133 Nev. 276, 284, 396 P.3d 815, 821 (2017). "The United States Supreme Court has held that an equal protection claim may be brought by a 'class of one' if [he or she] can demonstrate that he or 'she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.'" *Id. (quoting Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000)). "'[T]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the state's jurisdiction against

intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.'" *Olech*, 528 U.S. at 564 (quoting *Sioux City Bridge Co. v. Dakota Cty.,* 260 U.S. 441, 445 (1923)).

Riley argues that the State consistently allowed the statutory schemes to be mixed during the previous implementation of the Adam Walsh Act in 2016. The State does not contest that the statutory schemes were improperly blended in six instances: *Nicholas v. State*, Eighth Judicial District Court Case No. A-16-738997-C; *Sipple v. State*, Eighth Judicial District Court Case No. A-16-737035-P; *Viars v. State*, Eighth Judicial District Court Case No. A- 16-738992-C; *Palmira v. State*, Eighth Judicial District Court Case No. A-16-738771-P; *Moccia v. State*, Eighth Judicial District Court Case No. A-16-738722-P; and *Henson v. State*, Fifth Judicial District Court Case No. CV37910.

However, contrary to Riley's contentions, the statutory schemes were not blended in *Hewitt v. State*, First Judicial District Case No. 16 OC 00006 1E; *Cooley v. State*, Fourth Judicial District Court Case No. CV-C-16-737; and *Tillery v. State*, Fifth Judicial District Court Case No. CV38146. In all three of those cases, Megan's Law was applied in full to grant relief. And contrary to Riley's allegations, the State did not have a policy of allowing the Megan's Law tiering to be used with the Adam Walsh Act relief statute. *See Neary*, 422 P.3d 1232, at *1,

Martin v. State, Second Judicial District Court Case No. CV16-01257, and *McEwan v. State,* First Judicial District Case No. 16 OC 00156 1B). Indeed, this blending of the disparate statutory schemes only occurred in a handful of cases.

While the State allowed for such improper blending of statutory schemes in a few cases in 2016,[1] it is not an equal protection violation to properly apply the law in this case. Indeed, it is entirely rational for the State to apply the Adam Walsh Act's relief provision to Riley's' Adam Walsh Act tier ratings. This does not amount to intentional and arbitrary discrimination. *See Olech*, 528 U.S. at 563-65 (stating that an equal protection cause of action existed when the village demanded a 33-foot easement from a property owner when only a 15-foot easement was demanded of other similarly situated property owners); *Malfitano*, 133 Nev. at 284-85, 396 P.3d at 821 (explaining that even assuming that Plaintiff was treated differently, it was rational for the liquor board to consider his financial standing). It is, in fact, recognition and rectification of a previous wrong.

Should the petitions be subject to the Adam Walsh Act provisions, both the Adam Walsh Act version of the relief provision and the Adam Walsh Act tiering must be used. *See Finger v. State*, 117 Nev. 548, 575, 27 P.3d 66, 84 (2001);

[1] Due to a series of federal and state lawsuits, the enforcement of Nevada's version of the Adam Walsh Act was enjoined and only in effect from January 22, 2016 to July 1, 2016." *See Does 1-17 v. Eighth Judicial Dist. Court,* Docket No. 70704 (Order, July 1, 2016). The Act was then re-enjoined by the Nevada Supreme Court and did not go into effect again until April 27, 2018. *See Does 1-17 v. Eighth Judicial Dist. Court,* Docket No. 70704 (Order, April 27, 2018).

We People Nev. ex rel. Angle v. Miller, 124 Nev. 874, 889-90, 192 P.3d 1166, 1176 (2008). Indeed, as explained by this Court in *Finger v. State*, 117 Nev. 548, 575, 27 P.3d 66, 84 (2001), the enforcement of one provision of an act "without the other would be to create unintended consequences and frustrate the very object of the act." *See also We People Nev. ex rel. Angle v. Miller*, 124 Nev. 874, 889-90, 192 P.3d 1166, 1176 (2008). Allowing Riley to apply a portion of the Adam Walsh Act (the relief provision) together with a portion of Megan's Law (the tiering designation) would be improper and in direct contradiction to the intention of the Legislature in passing the Adam Walsh Act to replace Megan's Law, and to this Court's express decision in *Neary* holding that such commingling is improper. *See* AB 579 (2007); *see also Finger*, 117 Nev. at 575, 27 P.3d at 84; *Miller*, 124 Nev. at 889-90, 192 P.3d at 1176.

The Nevada State Legislature passed the Adam Walsh Act in Nevada in 2007 to alter existing Nevada law (Megan's Law) regarding the registration of sex offenders and offenders convicted of a crime against a child. AB 579, 2007 Leg., 74th Sess. (Nev. 2007). Nevada's implementation of the Adam Walsh Act changes sex offenders' tier ratings from a subjective process to a statutory assignment of tier ratings based on a person's sex-offense-based convictions. NRS 179D.113; NRS 179D.115; NRS 179D.117; *cf.* NRS 179D.730. This change to the tiering system impacts the frequency and procedures for reporting, the duration of

registration, and community notification (including which offenders must appear on Nevada's sex offender registry's website). *See* NRS 179D.480; NRS 179D.490; NRS 179D.475. As explained by the Nevada Supreme Court, "[b]oth the federal and state versions of the Adam Walsh Act were designed to replace Megan's Law." *Neary*, 422 P.3d 1232, at *1.

Riley cites to cases concerning the 2016 implementation of the Adam Walsh Act to argue that he must be afforded certain treatment. Riley is incorrect. This Court in the *Neary* case agreed with the State that "the district court improperly commingled the requirements of the Adam Walsh Act with the tier classification of Megan's Law to terminate Neary's registration obligation, and that applying either law separately, Neary is not eligible for termination of his obligation to register as a sex offender." *Neary*, 422 P.3d 1232, at *1. This Court then held that "Megan's Law and the Adam Walsh Act cannot be commingled to terminate a sex offender's obligation to register as a sex offender as the Adam Walsh Act was intended to replace Megan's Law." *Id*. at *2.

This Court further explained that in the context of the 2016 implementation, "Neary may have an equal protection argument" when the record demonstrated that "at least one other sex offender may have been allowed to commingle the statutes to terminate his registration obligation" but "the record has not been sufficiently developed for us to determine whether there is a rational basis for the

State's seemingly different treatment of at least one other individual, and whether there are other individuals for which the State has allowed an individual to terminate his registration requirements by commingling the statutes." *Id*. at *3. This Court, accordingly, remanded. *Id*.

The *Neary* remand was for the limited purposes of looking at the 2016 implementation and how sex offenders had been treated at that time. This case law does not address how implementation occurred in 2018. Indeed, there are no allegations that the State has allowed for the Megan's Law tiering to be used in conjunction with the Adam Walsh relief provision after this issue was resolved by the Nevada Supreme Court in the *Neary* case. Riley is not being treated differently to similarly-situated individuals—the Adam Walsh Act is being applied in full to all sex offenders in this State.

In an attempt to support his arguments, Riley relies on equal protection cases involving temporal disparity—wherein one individual is intentionally and systematically treated differently than all others during the same period. *See Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923); *Allegheny Pittsburgh Coal Co. v. County Com.*, 488 U.S. 336 (1989). However, there is no temporal disparity in this case—since the *Neary* decision, it is uncontested that all sex offenders have been assessed for relief from registration using both the Adam Walsh Act's tier and relief provisions.

Moreover, the cases cited by Riley do not provide that the State cannot change policies, interpretation, or application of the law going forward so long as they do so consistently. Indeed, a holding to that effect would hobble the State's abilities to make corrections or alterations to its interpretations of the law to better and more safely serve the people of this State and to effectuate the intent of the Legislature. And these cases do not support that the State cannot or should not follow the *Neary* decision that clarified the proper application of the statutory schemes to sex offenders petitioning for relief from registration.

Contrary to Riley's assertions, the State did not consistently allow for a blending of the statutory schemes in 2016 and did not randomly change this policy in 2018. As explained above, the blending was allowed in only a handful of cases and was halted by this Court's *Neary* decision. Accordingly, there has been no equal protection violation.

In addition, even assuming that Riley was treated differently than other sex offenders who were petitioning for relief, DPS had an entirely rational basis for doing so. The statutory schemes are mutually exclusive and cannot be applied piecemeal. The sex offender laws do not provide for a comingling of the two statutory schemes but instead the Adam Walsh Act replaced Megan's Law in full.

See AB 579 (2007).[2] Riley's petition must be determined exclusively under one of these statutory schemes.

Under the Adam Walsh Act, Riley does not meet the statutory requirement for relief because, as a Tier III sexual offender, Riley must register for life. NRS 179D.490(3). Accordingly, Riley cannot demonstrate that he satisfies the statutory requirements to be relieved from his obligation to register as a sex offender.

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[2] Riley argues that "to constitute a rational basis, the distinction upon which the government bases disparate treatment must exist within the individual." AOB 10 (citing *Malfitano v. Cty. of Storey*, 133 Nev. Adv. Op. 40, 396 P.3d 815, 821 (2017) (involving the denial of a gaming license to an individual)). Because there is no disparate treatment in this case—all sex offenders are being treated the same since *Neary*—there is no need to identify an individualized distinction for each of the offenders. *See also Engquist v. Oregon Dept. of Agriculture*, 553 U.S. 591, 598 (2008) ("It is well settled that the Equal Protection Clause 'protect[s] persons, not groups'" (quoting *Adarand Constructors, Inc. v. Peña,* 515 U.S. 200, 227 (1995)).

CONCLUSION

Based on the foregoing, the District Court properly determined that Riley is not eligible to seek relief from his obligation to register as a sex offender at this time. Accordingly, DPS respectfully requests that this Court affirm the District Court's decision determining that Riley is not eligible to seek relief from his obligation to register as a sex offender.

DATED this 18th day of March, 2020.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 14 pt. Times New Roman type style.

I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 4707 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 18th day of March, 2020.

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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on March 18, 2020, I filed the foregoing document via this Court's electronic filing system. Parties that are registered with this Court's EFS will be served electronically as follows:

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