

IN THE SUPREME COURT OF THE STATE OF NEVADA*Filed via fax.***FILED**

LUIS HIDALGO, III and
ANABEL ESPINDOLA,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK, THE
HONORABLE DONALD M. MOSLEY,
DISTRICT JUDGE

Respondents,

THE STATE OF NEVADA,
Real Party in Interest.

FEB 20 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

Case No. 48233

**EMERGENCY MOTION FOR STAY
OF DISTRICT COURT PROCEEDINGS**

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FEB 26 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
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08-04160

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LUIS HIDALGO, III and
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OF DISTRICT COURT PROCEEDINGS**

COMES NOW, the State of Nevada, Real Party in Interest, by DAVID ROGER, District Attorney, through his deputy, STEVEN S. OWENS on behalf of the above-named respondents and submits this Emergency Motion for Stay of District Court Proceedings in district court case styled State of Nevada v. Luis Hidalgo, C212667.

This motion is based on the attached memorandum and all papers and pleadings on file.

Dated February 20, 2008.

DAVID ROGER
Clark County District Attorney
Nevada Bar # 002781

BY


STEVEN S. OWENS
Chief Deputy District Attorney
Attorney for Real Party in Interest

MEMORANDUM

On December 27, 2007, this Court issued a Writ of Mandamus to District Court Judge Donald Mosley striking the State's notice of intent to strike the death penalty. Thereafter, the State filed a timely Petition for Rehearing with this Court on or about January 14, 2008. In the Petition, the State argues this Court misapprehended the law and facts pertaining to the pecuniary gain aggravator and that a more appropriate remedy would have been to remand with leave to amend the death notice. To date, that Petition for Rehearing has not been decided and is still pending before this Court.

Nonetheless, the District Court below intends to proceed to trial on the matter as a non-capital case on Friday, February 22, 2008. On January 15, 2008, the State requested that the District Court stay the proceedings pending this Court's review of the State's Petition for Rehearing. At that time, the trial date was set for February 4, 2008. The District Court denied that request for a stay. Since that time, the trial date has been moved to February 22, 2008, although the Petition for Rehearing still has not been decided.

Proceeding to trial at this time as a non-capital case would deprive the State of its lawful right to be heard on its Petition for Rehearing. Furthermore, the State will suffer irreparable harm once the trial commences as it will be too late to reinstate the notice of intent to seek death penalty should this Court grant rehearing. As such, the State now moves this Court to stay the proceedings below pending a ruling from this Court on the State's pending Petition for Rehearing.

DATED this 20th day of February, 2008.

DAVID ROGER
Clark County District Attorney
Nevada Bar # 002781

BY


STEVEN S. OWENS
Chief Deputy District Attorney
Attorney for Real Party in Interest

CERTIFICATE OF MAILING

I hereby certify and affirm that I faxed and mailed a copy of the foregoing Emergency Motion for Stay of District Court Proceedings to counsel of record listed below on February 20, 2008.

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CERTIFICATE OF SERVICE

I hereby certify and affirm that a copy of the foregoing Emergency Motion for Stay of District Court Proceedings was faxed to:

Judge Donald Mosley
Department XIV
Clark County Courthouse
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Employee, Clark County
District Attorney's Office

OWENS/english