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2
3 IN THE SUPREME COURT OF THE STATE OF NEVADA

4 Electronically Filed
5 Apr 18 2013 02:34 p.m.
6 Tracie K. Lindeman
7 Clerk of Supreme Court

8 LUIS A, HIDALGO, JR.

CASE NO. 54209

9 Appellant,

10 vs.

11 THE STATE OF NEVADA

12 Respondent.

13 **MOTION TO RECALL REMITTITUR**

14 COMES NOW, Appellant, Luis A. Hidalgo, Jr., by and through his counsel
15 of record, Dominic P. Gentile, Esq., of the law firm of Gordon Silver, and
16 respectfully requests this Court recall the remittitur it issued on April 10, 2013 and
17 reinstate the prior stay pending resolution of Mr. Hidalgo's petition for a writ of
18 certiorari in the United States Supreme Court.

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **A. Legal Standard**

21 Nevada Rule of Appellate Procedure 41(b) provides as follows:

22 (b) Stay of Remittitur Pending Application for Certiorari.

23 (1) A party may file a motion to stay the remittitur pending
24 application to the Supreme Court of the United States for a writ of
25 certiorari. The motion must be served on all parties.

26 (2) The stay shall not exceed 120 days, unless the period is
27 extended for cause shown. If during the period of the stay there is
28 filed with the clerk of the Supreme Court of Nevada a notice from the
clerk of the Supreme Court of the United States that the party who has
obtained the stay has filed a petition for the writ in that court, the stay
shall continue until final disposition by the Supreme Court of the
United States.

(3) The court may require a bond or other security as a condition
to granting or continuing a stay of the remittitur.

1 (4) The court shall issue the remittitur immediately when a copy
2 of a United States Supreme Court order denying the petition for writ
of certiorari is filed.

3 NEV. R. APP. P. 41(b).

4 **B. Relevant Factual History**

5 On November 13, 2012, this Court entered its Order Denying En Banc
6 Reconsideration. Three days later, on November 16, 2012, Mr. Hidalgo filed a
7 Motion to Stay Remittitur pursuant to Nevada Rule of Appellate Procedure 41.
8 This Court then entered an Order Staying Remittitur on November 30, 2012. In
9 the Order, this Court stayed issuance of the remittitur until April 9, 2013 and noted
10 that the “stay shall continue in effect until final disposition of the certiorari
11 proceedings” if Mr. Hidalgo had filed a petition for writ of certiorari.

12 On February 11, 2013, Mr. Hidalgo filed his petition for a writ of certiorari
13 in the United States Supreme Court. *See* Letter from United States Supreme
14 Court’s Office of the Clerk, a true and correct copy of which is attached hereto as
15 Exhibit 1. Furthermore, the petition for a writ of certiorari was placed on the
16 United States Supreme Court docket on March 12, 2013 as Docket No. 12-1104
17 and currently remains pending before the United States Supreme Court. *See id.*

18 **C. Legal Argument**

19 As evidenced by the information above, the November 30, 2012 stay should
20 have remained effective because Mr. Hidalgo timely filed a petition for a writ of
21 certiorari in the United States Supreme Court. The petition was filed well before
22 this Court’s April 9, 2013 deadline and was placed on the United States Supreme
23 Court’s docket on March 12, 2013. The petition currently remains pending and
24 therefore Nevada Rule of Appellate Procedure 41(b)(2) mandates that the stay
25 continue until a final disposition is entered by the United States Supreme Court.


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Dated this 18th day of April, 2013.


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CERTIFICATE OF SERVICE

The undersigned, an employee of Gordon Silver, hereby certifies that on the 18 day of April, 2013, she served a copy of the Motion to Recall Remittur, by Electronic Service, in accordance with the Master Service List as follows:

Steven S. Owens
Chief Deputy District Attorney
Nancy A. Becker
Chief Deputy District Attorney
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155

Catherine Cortez Masto
Attorney General
100 North Carson Street
Carson City, NV 89701


ADELE L. JOHANSEN, an employee
of GORDON SILVER

EXHIBIT “1”

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001



SCANNED

William K. Suter
Clerk of the Court
(202) 479-3011

March 12, 2013

Mr. Dominic P. Gentile
3960 Howard Hughes Parkway
9th Floor
Las Vegas, NV 89169

Re: Luis Hidalgo, Jr., aka Luis A. Hidalgo
v. Nevada
No. 12-1104

Dear Mr. Gentile:

The petition for a writ of certiorari in the above entitled case was filed on February 11, 2013 and placed on the docket March 12, 2013 as No. 12-1104.

Forms are enclosed for notifying opposing counsel that the case was docketed.

Sincerely,

William K. Suter, Clerk

by A handwritten signature in cursive script, appearing to read "Clayton Higgins".

Clayton Higgins
Case Analyst

Enclosures