

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAVIER RIGHETTI
Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, COUNTY OF CLARK, THE
HONORABLE MICHELLE LEAVITT,
DISTRICT JUDGE,
Respondents,

THE STATE OF NEVADA,
Real Party In Interest.

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Jan 31 2017 10:27 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 70591

**RESPONSE TO SECOND MOTION
FOR STAY OF DISTRICT COURT PROCEEDINGS**

COMES NOW, the State of Nevada, Real Party In Interest, by STEVEN B. WOLFSON, District Attorney, through his Deputy, CHARLES THOMAN, on behalf of the above-named respondents and submits this Response to Second Motion for Stay of District Court Proceedings in the above-captioned case. This Response is based on the following memorandum and all papers and pleadings on file herein.

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Dated this 31st day of January, 2017.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ Charles Thoman

CHARLES THOMAN
Deputy District Attorney
Nevada Bar #012649
Office of the Clark County District Attorney

MEMORANDUM

On June 17, 2016, Petitioner in the instant case filed a Petition for Writ of Prohibition/Mandamus with the Nevada Supreme Court (No. 70591).

On August 23, 2016, Petitioner filed in District Court a Motion to Stay Trial and a Motion for *Atkins* Hearing (See Petitioner's Exhibit A, Motion to Stay Trial, and Petitioner's Exhibit B, Motion for Atkins Hearing, respectively). Subsequently, on September 6, 2016, the District heard the aforementioned motions. While the District Court did not specifically address the Motion to Stay Trial, the District Court did grant a stay pursuant to NRS 174.098, to which an *Atkins* hearing is set to commence February 22, 2017 (See Petitioner's Exhibit C, Transcript September 6, 2016, at 4:23-5:18).

On September 16, 2016, Petitioner filed a Motion to Stay District Court

Proceedings in this Honorable Court. On October 17, 2016, this Honorable Court denied Petitioner's Motion to Stay District Court Proceedings without prejudice to refile if a new trial date becomes imminent (See Petitioner's Exhibit D, Order Denying Stay).

On December 6, 2016, this Honorable Court heard oral arguments *En Banc* with regards to Petitioner's Writ of Prohibition/Mandamus. This Honorable Court has not yet issued a decision.

Trial is currently set to begin March 6, 2017. Petitioner now seeks to stay the District Court proceedings in filing the instant Second Motion for Stay of District Court Proceedings, in order to obtain a decision from this Honorable Court with regard to the issues raised in Petitioner's Writ of Prohibition/Mandamus.

This Honorable Court has previously denied Petitioner's request to stay the District Court proceedings. The District Court has granted a stay pursuant to NRS 174.098, however, such stay will be lifted after the *Atkins* hearing on February 22, 2017, prior to the March 6, 2017 trial date. If this Honorable Court has not ruled on Petitioner's Writ of Prohibition/Mandamus prior to the March 6, 2017 trial date, then a stay of the District Court Proceedings would be necessary.

Therefore, based upon the foregoing with regard to Petitioner's instant Second Motion for Stay of District Court Proceedings, the State respectfully submits the matter to the discretion of this Honorable Court.

Dated this 31st day of January, 2017.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ Charles Thoman*

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on January 31, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT
Nevada Attorney General

CHRISTY L. CRAIG
Deputy Public Defender

CHARLES THOMAN
Deputy District Attorney

BY /s/ E.Davis
Employee, District Attorney's Office

CT//ed