

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 In the Matter of: E. R.  
3 A Minor.

4 \_\_\_\_\_  
5 CLARK COUNTY DEPARTMENT OF  
6 FAMILY SERVICES and CLARK  
7 COUNTY DISTRICT ATTORNEY'S  
8 OFFICE  
9 Petitioner,

10 vs.

11 EIGHTH JUDICIAL DISTRICT  
12 COURT, THE HONORABLE  
13 CYNTHIA N. GIULIANI, DISTRICT  
14 COURT  
15 JUDGE  
16 Respondent,

17 PHILLIP RIVERA AND REGINA  
18 RIVERA AND  
19 STEPHANIE ROZIER AND  
20 JOEY ROZIER

Supreme Court No. 73272

District Court No. J-15-337398-P1

Electronically Filed  
Jun 19 2017 02:06 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

21 **EMERGENCY MOTION FOR STAY UNDER NRAP 27(e)**

22 In order to avoid irreparable harm, relief is requested on or before  
23 June 30, 2017, at 5:00 PM.

24 COMES NOW the State of Nevada by STEVEN B. WOLFSON, District  
25 Attorney, through his Deputy, TANNER SHARP, on behalf of the Clark County  
26 Department of Family Services, and hereby moves this Honorable Court for an  
27 EMERGENCY STAY of the District Court's order changing E.R. Rodriguez's  
28

1 placement. This motion is based upon all the points and authorities cited and upon  
2 any oral arguments made at the hearing for this Motion.  
3

4 DATED this 17<sup>th</sup> day of June, 2017.

5 Respectfully submitted,

6 STEVEN B. WOLFSON  
7 Clark County District Attorney

8  
9 BY

  
10 TANNER L. SHARP  
11 Deputy District Attorney  
12 Nevada Bar #13018

13 **RELIEF SOUGHT FROM NEVADA SUPREME COURT**

14 The Clark County Department of Family Services by and through the Clark  
15 County District Attorney's Office requests a stay of the order issued by the Eighth  
16 Judicial District Court on June 12, 2017. (Exhibit 1). Specifically, that E.R. shall  
17 remain in her current, adoptive home, thereby allowing this Court opportunity to  
18 review the State's petition for writ of mandamus.  
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21 **LIMITED STATEMENT OF THE FACTS**

22 On July 27, 2015, the Department of Family Services (hereinafter "DFS")  
23 removed E.R. from the care of her natural mother, Nellie Saez (hereinafter "Saez").  
24 At the time of removal, Saez was asked for potential placements for E.R. Saez  
25 provided the first name of E.R.'s adult half sibling, Carolina, with no further  
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1 information. On July 29, 2015, the court placed E.R. in protective custody. On  
2 September 3, 2015, Saez plead no contest to a child welfare petition. On  
3 September 15, 2015, the Court took wardship of E.R. (See Affidavit of  
4 Verification).  
5

6 On or about July 29, 2015, DFS submitted a diligent search for family  
7 members in order to find potential placements. Four relatives were identified. The  
8 Department attempted contact with the relatives, but none were willing to take  
9 custody of E.R. Id.  
10  
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12 On September 9, 2016, DFS placed E.R. in the adoptive home of foster  
13 parents, Phillip and Regina Rivera (hereinafter Riveras). On or about  
14 October 18, 2016, Stephanie Rozier (hereinafter "Rozier") contacted DFS  
15 requesting information as to E.R. Id.  
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18 On October 20, 2016, DFS contacted Rozier who reported that she and her  
19 husband were living in Georgia and were interested in placement of E.R. DFS  
20 advised Rozier that E.R. was in an adoptive foster home and inquired as to why  
21 Rozier had not come forward earlier in the case. DFS reported at the time of the  
22 call that Rozier was not able to provide a clear answer to the question. DFS  
23 advised Rozier that E.R. had been in care for sixteen months. DFS then discussed  
24 the ICPC process with Rozier and advised that it would work with Rozier to  
25 submit the ICPC; however, E.R. was currently in an adoptive placement. Id.  
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1           On January 12, 2017, a hearing was held on the petition to terminate Saez's  
2 parental rights. Rozier was aware of the hearing but did not attend. The Court  
3 granted the petition. On February 18, 2017, the Court filed the order terminating  
4 her parental rights. Id.  
5

6           On March 2, 2017, Rozier contacted DFS, advising that the ICPC had been  
7 approved and that she wanted placement of the child. The Hearing Master was  
8 advised of Rozier's request and set an evidentiary hearing on placement. The  
9 hearing took place on April 13, 2017 and April 14, 2017. Id.  
10

11           During the hearing, Rozier testified that she was aware of E.R.'s birth, had  
12 known Saez her whole life and was aware that Saez had substance abuse and  
13 mental health issues. Rozier also knew that Saez had several children in the system  
14 and had been homeless at times. Rozier claimed that she was completely unaware  
15 that E.R. had been removed prior to October 18, 2016. However Rozier admitted  
16 "it wasn't surprising considering what we know about her." Id.  
17

18           Rozier further testified that she had never met E.R. and when questioned  
19 about what she could offer E.R., Rozier first addressed the foster parents and stated  
20 that, "There is no doubt in my mind that they can provide the same life... We can  
21 equally give her the same life, the same love, the same care... There's no doubt  
22 about that." Id.  
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1           During the evidentiary hearing, the State presented evidence that E.R. was  
2 extremely bonded to the Riveras and that removal from their home would cause  
3 substantial, long term trauma. This evidence was never rebutted. Additionally, the  
4 Riveras were to adopt E.R. within thirty days. Id.

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6           At the conclusion of the hearing the Hearing Master found that, all things  
7 being equal, (1) E.R. is incredibly bonded with the Riveras and the Riveras have  
8 proven they have the ability to care for E.R.; (2) the Roziers have a biological  
9 family connection with E.R. and that it is highly likely that the Roziers will end up  
10 with one of the E.R.'s sibling, and (3) the courts and legislature have determined  
11 that when comparing bonding with biological, family connection, family  
12 connection is the overriding consideration and the family is where the child should  
13 be placed, despite the trauma that E.R. will experience with a fourth removal.  
14 (Exhibit 2).

15           As such, the Court recommended that E.R. be placed with Rozier, despite no  
16 findings as to the best interest of the child. Id. On May 1, 2017, DFS filed an  
17 objection to the Hearing Master's recommendation. On May 22, 2017, counsel for  
18 the child and counsel for the Riveras filed a response and a joinder respectively.  
19 (See Affidavit in Support of Motion).

20           On May 23, 2017, an objection hearing was held before Honorable Judge  
21 Cynthia Giuliani. Judge Giuliani found that the familial preference applied in this  
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1 case, despite Saez's rights being terminated, and Judge Giuliani upheld Hearing  
2 Master Norheim's recommendation. (Exhibit 1). DFS made an oral motion for a  
3 stay in order to allow time for it to file a writ of mandamus, or in the alternative, a  
4 writ of prohibition. The motion was denied. (See Affidavit of Verification).  
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6 On June 12, 2017, Judge Giuliani issued the written court order but failed to  
7 include DFS's motion for stay or the court's denial of the motion. Id.  
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### 9 POINTS AND AUTHORITIES

#### 10 **I. LEGAL AUTHORITY FOR STAY**

11 NRAP (8)(a)(1) states that:

12 A party must ordinarily move first in district court for a stay of the judgment  
13 or order of, or proceedings in, a district court pending appeal or resolution of  
14 a petition to the Supreme Court for an extraordinary writ.  
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16 However, a motion for stay can be made to the Supreme Court where:

17 The district court denied the motion or failed to afford the relief requested  
18 and state any reasons given by the district court for its action. (NRAP  
19 (8)(a)(2)(A)(ii))

20 Such a motion to the Supreme Court must also include

- 21 (i) the reasons for granting the relief requested and the facts relied on;  
22 (ii) originals or copies of affidavits or other sworn statements  
23 supporting facts subject to dispute; and  
24 (iii) relevant parts of the record. (NRAP (8)(a)(2)(B))

25 In civil cases involving child custody, the Court will consider the following  
26 factors:

27 In deciding whether to issue a stay in matters involving child custody,  
28 the Supreme Court or Court of Appeals will consider the following  
factors: (1) whether the child(ren) will suffer hardship or harm if the

1 stay is either granted or denied; (2) whether the nonmoving party will  
2 suffer hardship or harm if the stay is granted; (3) whether movant is  
3 likely to prevail on the merits in the appeal; and (4) whether a  
4 determination of other existing equitable considerations, if any, is  
warranted. (NRAP (8)(d)

5 In accordance with the statutory authority cited above, the Clark County  
6 Department of Family Services requests that this Court issue a stay to prevent the  
7 unnecessary removal of E.R. from her adoptive home. The request is based on the  
8 grounds that the State has filed a petition for writ of mandamus concurrent with  
9 this motion to seek this Court's review of the District Court's decision to place  
10 E.R. with the Roziers.  
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13 **II. APPLICATION OF LEGAL AUTHORITY TO INSTANT**  
14 **MATTER.**

15 **(1) Whether the child will suffer hardship or harm if the stay is**  
16 **either granted or denied.**

17 In the instant matter, the child, E.R. Rodriguez, is currently residing with her  
18 adoptive parents with whom she has lived for nine months. E.R. is extremely  
19 bonded to the Riveras and has never met the Rozier's. E.R. will suffer no hardship  
20 or harm if the stay is granted and she is allowed to remain in her current home.  
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23 However, E.R. will be traumatized should her placement be changed given  
24 her bond with the Riveras and as she has never met the Roziers. Should placement  
25 take place and the State's writ be granted, she will be moved unnecessarily and  
26 will suffer needlessly.  
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1           **(2) Whether the nonmoving party will suffer hardship or harm if the**  
2           **stay is granted**

3           The Roziers will suffer minimal hardship if the stay is granted. The Roziers  
4 have not met E.R. They have not formed any bond or relationship with her. If the  
5 State's writ is denied, they can then begin a relationship with E.R.  
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7           **(3) Whether movant is likely to prevail on the merits in the appeal**  
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9           Although it cannot be determined with certainty that the writ will be granted,  
10 a number of legal issues raised by the Hearing Master and the District Court  
11 demonstrate that the State is likely to prevail. The Hearing Master made no  
12 findings as to the best interest of the child and failed to use the proper standard in  
13 determining placement. However, the District Court upheld the Hearing Master's  
14 recommendation, finding that he did indeed consider the best interest of the child.  
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17           Additionally, the State introduced significant evidence showing that E.R. is  
18 extremely bonded to the Riveras and that removing her from their home would  
19 cause significant, long term harm, and would not be in her best interest. The  
20 Hearing Master acknowledged this trauma in his recommendation. However, both  
21 the Hearing Master and the District Court found that the family relationship was  
22 more important than the harm caused to the child. This is not in accordance with  
23 the standard set forth by this Court.  
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26           Finally, the District Court found that the familial preference survived the  
27 termination of parental rights. This is contrary to statutory and case law  
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1 demonstrating that familial rights flow from the parent and when the parental  
2 relationship is severed, the relationship between the child and biological relatives  
3 is severed as well.  
4

5 **(4) Whether a determination of other existing equitable**  
6 **considerations, if any, is warranted**

7 The State has the right to petition this Court to review the decisions made by  
8 the District Court. By denying DFS's motion to stay the placement change, the  
9 District Court is attempting to circumvent the Department's right by removing E.R.  
10 from her adoptive home and placing the child with individuals that she does not  
11 know in a state E.R. has never lived. Such actions would deny DFS the opportunity  
12 to exercise its right prior to moving E.R. Furthermore, the District Court is  
13 exposing E.R. to unnecessary harm and trauma should the State's petition for writ  
14 be granted.  
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18 Equity requires that the State and DFS be given the opportunity to voice its  
19 concerns to this Court prior to moving and traumatizing the child.  
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1 **CONCLUSION**

2 DFS respectfully requests that this Honorable Court issue an emergency stay  
3 pending the writ process, thereby avoiding an unnecessary removal and significant  
4 harm to E.R.  
5

6 DATED this 19<sup>th</sup> day of June 2017.  
7

8 Respectfully submitted,

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

12 BY

  
13 TANNER L. SHARP  
14 Deputy District Attorney  
15 Nevada Bar #13018  
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1 VERIFICATION

2 STATE OF NEVADA )  
3 COUNTY OF CLARK) ss:

4 TANNER SHARP, being first duly sworn, deposes and says:

5 That he is the Deputy District Attorney acting for STEVEN B. WOLFSON,  
6 District Attorney and the Petitioners in the above captioned Petition; that he has  
7 read the foregoing EMERGENCY MOTION FOR STAY UNDER NRAP 27(e)  
8 and knows the contents therein and that the same is true and correct to his own  
9 knowledge except as to those matters therein set forth on information and belief,  
10 and as to those matters, he believes same to be true. The Petitioner has no other  
11 remedy at law available, and the only means to address this issue is through the  
12 instant writ. Counsel signs this verification on behalf of the Department of Family  
13 Services, under its direction and authorization.  
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18 DATED this 14<sup>th</sup> day of June 2017.

19 Respectfully submitted,

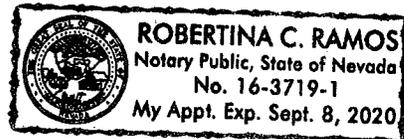
20 STEVEN B. WOLFSON  
21 Clark County District Attorney

22 BY

Tanner L. Sharp  
23 TANNER L. SHARP  
24 Deputy District Attorney  
25 Nevada Bar #13018

26 SUBSCRIBED AND SWORN to  
27 before me this 14<sup>th</sup> day of June, 2017.

Robertina C. Ramos  
28 Notary Public in and for said  
State and County



1 NRAP 27(e) CERTIFICATE

2  
3 The undersigned hereby certified that he notified the clerk of the Nevada  
4 Supreme Court on June 19<sup>th</sup>, 2017 that an EMERGENCY MOTION UNDER  
5 NRAP 27(e) was being filed.  
6

7 In addition, on June 19<sup>th</sup>, 2017, the undersigned notified counsel by  
8 telephone and a copy of the motion was provided to counsel by email. The  
9 telephone numbers and office addresses of the attorneys for the parties and persons  
10 with direct interest are as follows:  
11

12 RAYMOND E. MCKAY, ESQ.  
13 7251 West Lake Mead Boulevard,  
14 Suite 250  
15 Las Vegas, Nevada 89128  
16 (702) 284-5919  
Attorney for E.R. Rodriguez

JOHN BLACKMON, III, ESQ.  
2200 Paseo Verde Parkway,  
Suite 350  
Henderson, NV 89052  
702-476-2400  
Attorney for Stephanie and Joe Rozier

17 GREGORY MILLS, ESQ.  
18 703 S. Eighth Street  
19 Las Vegas, NV 89101  
20 (702) 386-0030  
Attorney for Philip and Regina Rivera

21  
22  
23 The Honorable Judge Cynthia Giuliani was notified by telephone and a copy  
24 of the motion was placed in Judge Giuliani's pleading drop box on the 3<sup>rd</sup> floor of  
25 the Family Court building, 601 N. Pecos Road, Las Vegas, NV 89101.  
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27 ...  
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1           This motion for stay is being filed on an emergency basis as the District  
2 Court has denied a stay of change of placement, thereby removing subject minor,  
3 E.R. Rodriguez, from her adoptive home and placing the child with Stephanie and  
4 Joe Rozier. This motion is urgent as the placement and safety of the child must be  
5 decided as soon as possible. If the stay is not granted by this Court, E.R. will be  
6 removed from her adoptive home, causing the child irreparable trauma.  
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8  
9           Furthermore, the State is preparing to file a writ of mandamus or, in the  
10 alternative, a writ of prohibition as: (1) the District Court erred in upholding the  
11 Hearing Master's recommendation which failed to make a finding as to the best  
12 interest of the child; (2) the District Court erred in upholding the Hearing Master's  
13 recommendation as the recommendation was clearly erroneous; and, (3) the  
14 District Court erred in finding that the familial preference survived the termination  
15 of parental rights. It is essential that these issues be decided by this Court prior to  
16 any change of placement so that E.R. is not removed and traumatized  
17 unnecessarily.  
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19  
20           During the objection hearing held before the Honorable Judge Cynthia  
21 Giuliani on May 23, 2017, the State made an oral motion for stay in order to allow  
22 the State opportunity to file a writ of mandamus or, in the alternative, a writ of  
23 prohibition to dispute the order removing E.R. from her home. Judge Giuliani  
24 denied the State's motion. Judge Giuliani issued her written order on  
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1 June 12, 2017; however, the order did not include a denial of the State's request to  
2 stay the motion. Given the urgent nature of this matter and as the State advanced  
3 all grounds in support of its motion by way of its filed objection, oral argument at  
4 the time of the hearing, and its oral motion for stay, the State requests that this  
5 Court grant its motion.  
6  
7

8 DATED this 19<sup>th</sup> day of June 2017.

9 Respectfully submitted,

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

13  
14 BY

  
15 TANNER L. SHARP  
16 Deputy District Attorney  
17 Nevada Bar #13018  
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**CERTIFICATE OF MAILING**

I hereby certify that service of the **EMERGENCY MOTION FOR STAY UNDER NRAP 27(e)** was made this 10<sup>th</sup> day of June 2017, by electronic mailing, addressed to the following:

RAYMOND E. MCKAY, ESQ.  
7251 West Lake Mead Boulevard,  
Suite 250  
Las Vegas, Nevada 89128  
(702) 284-5919  
Attorney for E.R. Rodriguez  
[raymond.mckay@libertymutual.com](mailto:raymond.mckay@libertymutual.com)

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Clark County District Attorney's Office,  
Juvenile Division