

1
2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3
4 GUSTAVO RAMOS,)

5 Petitioner,)

6 v.)

7
8 THE EIGHTH JUDICIAL DISTRICT)
9 COURT OF THE STATE OF NEVADA,)
10 COUNTY OF CLARK,)

11 THE HONORABLE JENNIFER P.)
12 TOGLIATTI, DISTRICT JUDGE)

13 Respondent,)

14 and)

15 THE STATE OF NEVADA,)
16 Real Party in Interest.)

No. Electronically Filed
Nov 01 2017 08:34 a.m.
(District Ct. Elizabeth A. Brown
Clerk of Supreme Court

17
18 **MOTION FOR STAY OF DISTRICT COURT PROCEEDINGS**

19 IVETTE AMELBURU MANINGO, ESQ.
20 Law Offices of Ivette Amelburu Maningo
21 400 S. 4th Street, Suite 500
22 Las Vegas, Nevada 89101

ADAM PAUL LAXALT
Nevada Attorney General
100 N. Carson Street.
Carson City, Nevada 89701

23 *Attorney for Respondent*

24 ABEL M. YANEZ, ESQ.
25 Nobles & Yanez, PLLC
26 324 South Third St., Ste. #2
Las Vegas, Nevada 89109

STEVEN B. WOLFSON
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155

27 *Attorneys for Petitioner*

Attorney for Real Party in Interest

GUSTAVO RAMOS,) No.
) (District Ct. No. C-10-269839)
)
 Petitioner,)
)
)
 v.)
)
)
 THE EIGHTH JUDICIAL DISTRICT)
 COURT OF THE STATE OF NEVADA,)
 COUNTY OF CLARK,)
 THE HONORABLE JENNIFER P.)
 TOGLIATTI, DISTRICT JUDGE)
)
 Respondent,)
)
)
 and)
)
)
 THE STATE OF NEVADA,)
 Real Party in Interest.)

COMES NOW, Petitioner, GUSTAVO RAMOS, by and through his attorneys, Ivette Amelburu Maningo, of the Law Offices of Ivette Amelburu Maningo, and Abel M. Yanez, Esq., of the Nobles & Yanez Law Firm, and moves this Honorable Court, pursuant to NRAP (8)(a)(2), and N.R.S. §§ 34.160 and 34.330, for an Order granting a stay of the district court proceedings.

2

1 Prohibition challenging the district court's Order denying Defendant's Objection to
2 State Expert's Testing.
3

4 DATED this 30th day of October, 2017.

5 **Nobles & Yanez Law Firm**

Law Offices of Ivette Amelburu Maningo

7 /s/ Abel Yanez

/s/ Ivette Amelburu Maningo

8 ABEL M. YANEZ, ESQ.

IVETTE AMELBURU MANINGO, ESQ.

9 Nevada Bar No.: 7566

Nevada Bar No.: 7076

324 South Third St., Ste. #2

400 S. 4th Street, Suite 500

10 Las Vegas, Nevada 89109

Las Vegas, Nevada 89101

11 (T): (702) 641-6001

(T): (702) 793-4046

12 (F): (702) 641-6002

(F): (702) 793-4001

13 *Attorneys for Petitioner Gustavo Ramos*
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **DECLARATION OF ABEL YANEZ, ESQ.**

2 Pursuant to the provisions of N.R.S. § 53.045, ABEL YANEZ, ESQ., hereby
3
4 declares as follows:

5 1. That Affiant is an attorney duly licensed to practice law in the State of
6
7 Nevada and is one of the two attorneys assigned to represent Petitioner, Gustavo
8 Ramos.

9 2. That Petitioner, who is facing the death penalty, has authorized me to
10
11 file the instant Motion together with a Petition for Writ of Mandamus or
12 Prohibition.

13 3. Pursuant to NRAP 8(a)(1), Petitioner first filed a Motion for Stay of
14
15 Proceedings in the district court on September 8, 2017. *See* Ex. "A."

16 4. The district court held a hearing on Petitioner's Motion for Stay of
17
18 Proceedings on September 26, 2017. *See* Ex. "B."

19 5. The district court denied Petitioner's Motion pursuant to an Order
20
21 filed on October 18, 2017. In denying Petitioner's Motion, the district court's
22 reason was that it did "not believe there is a possibility of success on the merits."
23 *See* Ex. "C."

24 6. That although the district court denied a stay, the court recognized the
25
26 importance of the issues raised and asked that the State delay the evaluation by its
27
28

1 expert for at least 30 days so Petitioner could seek a stay with this Court. *See* Ex.
2 “B.”
3

4 7. That Petitioner’s underlying Petition for Writ of Mandamus or
5 Prohibition raises important issues concerning the constitutional limits of an
6 intellectual disability evaluation by a prosecution expert.
7

8 8. That the scope of that evaluation must be limited to protect
9 Petitioner’s Fifth Amendment right against self-incrimination, and his Eighth
10 Amendment right to a reliable *Atkins* determination in accordance with current
11 medical standards.
12

13 9. That the district court authorized the State’s expert to administer
14 testing instruments that are irrelevant to a diagnosis of intellectual disability and
15 considered extremely unreliable by the medical community.
16

17 10. If the district court’s order on the disputed testing by the State’s expert
18 is enforced, Petitioner will be compelled to divulge privileged and potentially
19 harmful information that would forever lose its confidential and privileged quality,
20 and which far exceeds the scope of admissible rebuttal evidence.
21
22

23 11. That the State’s expert is currently scheduled to perform an
24 intellectual disability evaluation of Petitioner on December 6 and 7, 2017.
25

26 12. It is of the utmost necessity that the proceedings in the district court
27 be stayed because, if the testing proceeds forward on the scheduled dates, the harm
28

1 and prejudice that is sought to be prevented would be inflicted and Petitioner
2 would have no effective remedy, including by a later appeal.
3

4 13. That it is necessary to hold in abeyance the district court proceedings
5 until such time as this Honorable Court has adjudicated Petitioner's extraordinary
6 Writ.
7

8 14. That any inconvenience to the State is minimal when balanced against
9 Petitioner's Fifth and Eighth Amendment rights to have this matter fairly and
10 appropriately determined before being subject to the State's testing.
11

12 I declare under penalty of perjury that the foregoing is true and
13 correct.
14

15 DATED this 30th day of October, 2017.

16 /s/ Abel Yanez
17 ABEL M. YANEZ, ESQ.
18 Nevada Bar No.: 7566
19 324 South Third St., Ste. #2
20 Las Vegas, Nevada 89109
21 (T): (702) 641-6001
22 (F): (702) 641-6002
23 EMAIL: ayanez@noblesyanezlaw.com
24 Attorney for Petitioner
25
26
27
28

Ex. "A"



0021

LAW OFFICES OF IVETTE AMELBURU MANINGO, ESQ.
IVETTE AMELBURU MANINGO, ESQ.
NEVADA BAR NO. 7076
400 S. 4th Street, Suite 500
Las Vegas, Nevada 89101
(T): (702) 793-4046
(F): (844) 793-4046
EMAIL: iamaningo@iamlawnv.com

ABEL M. YANEZ, ESQ.
NOBLES & YANEZ LAW FIRM
NEVADA BAR NO. 7566
324 South Third Street, Suite 2
Las Vegas, Nevada 89101
(T): (702) 641-6001
(F): (702) 641-6002
EMAIL: ayanez@noblesyanezlaw.com

Attorneys for Defendants Gustavo Ramos

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO: C-10-269839-1
)	
v.)	DEPT. NO: IX
)	
GUSTAVO RAMOS)	
#1516662)	
)	
Defendant.)	

DEFENDANT'S MOTION FOR STAY OF PROCEEDINGS

COMES NOW, the Defendant, GUSTAVO RAMOS, by and through his attorneys of record, Ivette Amelburu Maningo, of the Law Offices of Ivette Amelburu Maningo, and Abel M. Yanez, Esq., of the Nobles & Yanez Law Firm, and hereby moves this Court for a stay of proceedings so the Defense can pursue a Petition for a Writ of Mandamus on the issues articulated in Defendant's Objection to State Expert's Testing.

1 This motion is made pursuant to NRAP 8(a)(1), in good faith, and not for the purpose of
2 delay.

3 DATED this 8th day of September, 2017.

4 **Nobles & Yanez Law Firm**

Law Offices of Ivette Amelburu Maningo

5 /s/ Abel Yanez

/s/ Ivette Maningo

6 ABEL M. YANEZ, ESQ.

IVETTE AMELBURU MANINGO, ESQ.

Nevada Bar No.: 7566

Nevada Bar No.: 7076

7 324 South Third St., Ste. #2

400 S. 4th Street, Suite 500

Las Vegas, Nevada 89109

Las Vegas, Nevada 89101

8 (T): (702) 641-6001

(T): (702) 793-4046

9 (F): (702) 641-6002

(F): (844) 793-4046

10 *Attorneys for Defendant Gustavo Ramos*

11
12
13 **NOTICE OF MOTION**

14 TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

15 YOU WILL PLEASE TAKE NOTICE that Ivette Amelburu Maningo, of the Law Offices
16 of Ivette Amelburu Maningo, and Abel M. Yanez, Esq., of the Nobles & Yanez Law Firm, will
17 bring the above and foregoing Motion on for hearing before the Court on the 19 day of
18 September 2017, at 9:00 a.m.

19 DATED this 8th day of September, 2017.

20 **Nobles & Yanez Law Firm**

Law Offices of Ivette Amelburu Maningo

21
22 /s/ Abel Yanez

/s/ Ivette Maningo

23 ABEL M. YANEZ, ESQ.

IVETTE AMELBURU MANINGO, ESQ.

Nevada Bar No.: 7566

Nevada Bar No.: 7076

24 324 South Third St., Ste. #2

400 S. 4th Street, Suite 500

Las Vegas, Nevada 89109

Las Vegas, Nevada 89101

25 (T): (702) 641-6001

(T): (702) 793-4046

26 (F): (702) 641-6002

(F): (844) 793-4046

27 *Attorneys for Defendant Gustavo Ramos*

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

District Attorneys Office
E-Mail Address:

robert.daskas@clarkcountyda.com
pamela.weckerly@clarkcountyda.com
motions@clarkcountyda.com
Attorneys for Plaintiff

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



OPPS

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #1565
PAMELA WECKERLY
Chief Deputy District Attorney
Nevada Bar #6163
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GUSTAVO RAMOS,
#1516662

Defendant.

CASE NO: C-10-269839-1

DEPT NO: IX

**STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR
STAY OF PROCEEDINGS**

DATE OF HEARING: 09-19-2017
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through PAMELA WECKERLY, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion for Stay of Proceedings.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

///

///

///

///

1 POINTS AND AUTHORITIES

2 STATEMENT OF FACTS

3 The events of this case occurred in May 1998, a double homicide of two elderly
4 residents of a retirement home. Defendant Ramos was initially arraigned on January 3, 2011.
5 The State filed the Notice of Intent to Seek Death on January 24, 2011. At that time, Defendant
6 Ramos was represented by the Office of the Public Defender. Those attorneys moved to
7 withdraw on May 14, 2014. Defendant Ramos' current attorneys were appointed on May 21,
8 2014. About a year and a half after the appointment, Defendant Ramos, through his attorneys,
9 filed an Atkins claim on December 5, 2016. The State has yet to conduct testing on Defendant
10 Ramos. Now, his attorneys seek a stay in which to challenge this Court's ruling that the
11 defense cannot dictate the tests administered to Defendant Ramos by the State's expert. The
12 State opposes.

13 ARGUMENT

14 At this point, it has been about 20 years since the crime occurred. It has been over six
15 years since Defendant Ramos was arraigned on the charges. And, it has been three years since
16 his current attorneys were appointed to his case. The Atkins motion in this case was filed
17 almost six years after the preliminary hearing.

18 That this case has taken over six years to move through the criminal justice system is
19 alarming. The death notice was filed in January 2011, yet it took almost six years—December
20 5, 2016—for the defense to raise an Atkins claim. The Atkins issue is not even resolved at
21 this point. The defense request for a stay of the proceedings in which to challenge this Court's
22 ruling on Atkins testing is unacceptable.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 CONCLUSION

2 Based on the foregoing, the State opposes the defense motion for a stay.

3 DATED this 14th day of September, 2017.

4 Respectfully submitted,

5 STEVEN B. WOLFSON
6 Clark County District Attorney
7 Nevada Bar #1565

8 BY /s/ Pamela Weckerly
9 PAMELA WECKERLY
10 Chief Deputy District Attorney
11 Nevada Bar #6163

12 CERTIFICATE OF ELECTRONIC TRANSMISSION

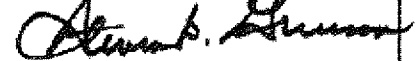
13 I hereby certify that service of the above and foregoing was made this 14th day of
14 September, 2017, by electronic transmission to:

15 IVETTE MANINGO, ESQ.
16 E-mail Address: iamaningo@iamlawnv.com

17 ABEL YANEZ, ESQ.
18 E-mail Address: ayanez@noblesyanezlaw.com

19 BY: /s/ J. Georges
20 Secretary for the District Attorney's Office

21 PW/jg/MVU



RPLY

LAW OFFICES OF IVETTE AMELBURU MANINGO, ESQ.
IVETTE AMELBURU MANINGO, ESQ.
NEVADA BAR NO. 7076
400 S. 4th Street, Suite 500
Las Vegas, Nevada 89101
(T): (702) 793-4046
(F): (844) 793-4046
EMAIL: iamaningo@iamlawnv.com

ABEL M. YANEZ, ESQ.
NOBLES & YANEZ LAW FIRM
NEVADA BAR NO. 7566
324 South Third Street, Suite 2
Las Vegas, Nevada 89101
(T): (702) 641-6001
(F): (702) 641-6002
EMAIL: ayanez@noblesyanezlaw.com

Attorneys for Defendants Gustavo Ramos

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO: C-10-269839-1
)	
v.)	DEPT. NO: IX
)	
GUSTAVO RAMOS)	
#1516662)	
)	
Defendant.)	

**DEFENDANT'S REPLY TO STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR
STAY OF PROCEEDINGS**

COMES NOW, the Defendant, GUSTAVO RAMOS, by and through his attorneys, Ivette Amelburu Maningo, of the Law Offices of Ivette Amelburu Maningo, and Abel M. Yanez, Esq., of the Nobles & Yanez Law Firm, and hereby submits the following Reply to the State's Opposition to Defendant's Motion for Stay of Proceedings. Defendant's Reply is supported by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, article I, sections 6 and 8 of

1 the Nevada Constitution, N.R.S. § 174.098, and the following memorandum of points and
2 authorities.

3 DATED this 18th day of September, 2017.

4 **Nobles & Yanez Law Firm**

Law Offices of Ivette Amelburu Maningo

5
6 /s/ Abel Yanez

7 ABEL M. YANEZ, ESQ.

8 Nevada Bar No.: 7566

324 South Third St., Ste. #2

Las Vegas, Nevada 89109

9 (T): (702) 641-6001

10 (F): (702) 641-6002

/s/ Ivette Maningo

IVETTE AMELBURU MANINGO, ESQ.

Nevada Bar No.: 7076

400 S. 4th Street, Suite 500

Las Vegas, Nevada 89101

11 (T): (702) 793-4046

12 (F): (844) 793-4046

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Attorneys for Defendant Gustavo Ramos

MEMORANDUM OF POINTS AND AUTHORITIES

I. ARGUMENT

A. Defendant's Constitutional Rights Outweigh any State Interest to Proceed

The State argues in its Opposition that Defendant's Motion should be denied because it is "unacceptable" that the case "has taken over six years to move through the criminal justice system" *See* Opposition, pg. 2, lns. 14-15, 22. However, as the State acknowledges in its Opposition, Defendant's current counsel have only had the case for the past three years. During these three years, counsel has tried to prepare the case for trial (and possible penalty phase) as quickly as possible. However, counsel has not done so at the expense of Defendant's rights to the effective assistance of counsel and to a fair trial.

Furthermore, this is not your typical murder case. This is a cold case that began in 1998. Undoubtedly, it is more difficult and time consuming to properly investigate and prepare a death penalty case for trial when dealing with evidence that is over 20 years old as compared to a case that is only three years old.

It should also be mentioned that—through no fault of the Defendant—this case is now before its fourth district court judge. These numerous court changes have undoubtedly caused the proceedings to slow down. Furthermore, some of the delay has been caused by the State itself in asking for several extensions of time to respond to many of the motions the defense has filed. The defense has never objected to the State's requests for more time to file its oppositions.

Lastly, the defense is not asking for a stay to just simply delay the proceedings. Defendant's desired writ to the Nevada Supreme Court involves serious, constitutional protections that are literally a matter of life or death for the Defendant. Any prejudice to the State in staying the proceedings for a short period of time while a writ is taken to the Supreme Court is minimal compared to the constitutional rights at stake for the Defendant.

1 B. Not Imposing a Stay and Allowing the State to Proceed Forward with the
2 Challenged Tests would Defeat the Court's Prior Orders.

3 Over the State's opposition, Judge Cory granted Defendant's request that, within five days
4 before any testing by the State's expert, Defendant was to be provided with a list of all the testing
5 instruments the State's expert intended to administer during the evaluation. *See* Ex. "A." Not
6 imposing a stay now and allowing the State to proceed forward with the disputed testing
7 instruments would defeat the purpose of Judge Cory's Order. Specifically, Judge Cory denied
8 Defendant's Motion to Declare N.R.S § 174.098(4) Unconstitutional by interpreting the statute "in
9 such a way as to preserve the Defendant's rights under the constitution." *See* Ex. "B," pg. 12. That
10 is, the Court ruled that N.R.S §174.098(4) was not facially unconstitutional as it does not require a
11 full waiver of Defendant's Fifth Amendment right, but only a partial waiver. *See id.*, pgs. 4-12.
12

13 However, to balance its ruling that N.R.S §174.098(4) is not facially invalid, the Court also
14 ordered that the State provide the defense beforehand with a list of the tests it intended on
15 administering during Defendant's evaluation. *See id.* Defendant objected to two of the testing
16 instruments (i.e., ABAS-III and SIRS-2) as being irrelevant to the intellectual disability issue
17 before the Court and as not approved by current medical/psychological standards. Forcing the
18 Defendant to undergo these tests again raises a serious Fifth Amendment Privilege dilemma that
19 should be decided by the Nevada Supreme Court. If a stay is not imposed now, and the evaluation
20 is allowed to go forward with the State's expert utilizing those disputed testing instruments, it will
21 be too late to remedy the violation to Defendant's Fifth Amendment right. *See Powell v. Texas*,
22 492 U.S. 680, 685-86, n.3 (1989).
23

24 ///

25 ///

26 ///

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

Based on the foregoing, and pursuant to NRAP 8(a)(1), Defendant respectfully requests that his Motion be granted and a stay of the proceedings ordered until the Nevada Supreme Court has had an opportunity to address the serious constitutional issues presented.

DATED this 18th day of September, 2017.

Nobles & Yanez Law Firm

Law Offices of Ivette Amelburu Maningo

/s/ Abel Yanez

ABEL M. YANEZ, ESQ.

Nevada Bar No.: 7566

324 South Third St., Ste. #2

Las Vegas, Nevada 89109

(T): (702) 641-6001

(F): (702) 641-6002

/s/ Ivette Maningo

IVETTE AMELBURU MANINGO, ESQ.

Nevada Bar No.: 7076

400 S. 4th Street, Suite 500

Las Vegas, Nevada 89101

(T): (702) 793-4046

(F): (844) 793-4046

Attorneys for Defendant Gustavo Ramos

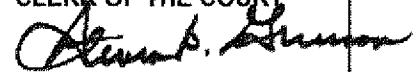
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

District Attorneys Office
E-Mail Address:

robert.daskas@clarkcountyda.com
pamela.weckerly@clarkcountyda.com
motions@clarkcountyda.com
Attorneys for Plaintiff

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EX. "B"



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 GUSTAVO RAMOS,

12 Defendant.

CASE NO. C-10-269839-1

DEPT. IX

13 ***BEFORE THE HONORABLE JENNIFER P. TOGLIATTI, DISTRICT COURT JUDGE***

14 ***TUESDAY, SEPTEMBER 26, 2017***

15 ***TRANSCRIPT OF PROCEEDINGS***

16 ***DEFENDANT'S MOTION FOR STAY OF PROCEEDINGS***

17 **APPEARANCES:**

18
19 For the State:

PAMELA WECKERLY, ESQ.
Deputy District Attorney

20
21 For the Defendant:

ABEL YANEZ, ESQ.
LANCE MANINGO, ESQ.

22
23 Also Present:

YUL HASSMAN
Court Certified Interpreter - Spanish

24
25 **RECORDED BY: PATTI SLATTERY, COURT RECORDER**

1 Las Vegas, Nevada, Tuesday, September 26, 2017 at 9:53 a.m.

2
3 THE COURT: State of Nevada versus Gustavo Ramos, C269839-1.

4 MS. WECKERLY: Good morning, Your Honor, Pam Weckerly on behalf of
5 the State.

6 MR. YANEZ: Good morning, Judge, Abel Yanez; and Lance Maningo is also
7 present. He's filling in for Ivette Maningo, so we can proceed forward.

8 THE COURT: Okay. The record should reflect that the Defendant is present
9 in custody and he has the services of the Court Certified Interpreter. Mr. Interpreter,
10 could you state your appearance again?

11 COURT CERTIFIED INTERPRETER: Yul Hassman, Court Interpreter.

12 THE COURT: All right. This is on for Defendant's motion for stay of
13 proceedings. I have reviewed a motion, an opposition, and a reply. Was there
14 anything separately filed that I did not list and should have?

15 MR. YANEZ: There was, Judge. Just briefly, I forgot to attach the exhibits to
16 my reply, so I submitted it under a separate filing. It was just the order from Judge
17 Cory denying our motion to declare the statute unconstitutional and also a transcript
18 of the hearing, which I think Your Honor already had an opportunity to review
19 previously when you were coming up to speed on the case.

20 THE COURT: And is the writ for his decision, mine, or both?

21 MR. YANEZ: No, it's for your decision based on our motion to prevent the
22 State from administering the two tests that they believe they have a right to
23 administer, so it's – our writ would be based on that denial.

24 THE COURT: Okay. Did you have anything you wish to add to your motion
25 and reply?

1 MR. YANEZ: No, don't want to re-argue or re-state the same things, Judge,
2 unless Your Honor has any questions. I think I laid it out in my reply why this is such
3 an important issue, and respond to the State's argument that this case is six years
4 old, and it's time consuming. So, I think I addressed that. So, unless Your Honor
5 has questions, I'm going to submit it.

6 THE COURT: Do you have anything else to add?

7 MS. WECKERLY: No.

8 THE COURT: All right. I'm denying the motion for stay for a few reasons.
9 Number one, I appreciate that this is important. Everything in this case is important
10 in light of the magnitude of the penalty sought. I just don't happen to agree with your
11 position. Quite frankly, I have a feeling – and I'm going to set the trial out far
12 enough, that if you have begun the process of working on the stay, you can ask the
13 Supreme Court, and perhaps they'll disagree with me and give you argument and
14 those kinds of things, but I'm going to set this trial out, you know, 2018 at some
15 point, and you'll have time to seek a stay from them. I'm not rushing you. If they
16 agree with your position or think there's some meat on the bone of that argument,
17 I'm sure they will stay me.

18 So, I'm denying the motion because I'm comfortable with my ruling. I
19 don't think there's a probability of success on the merits of the writ, but I'm going to
20 set the trial out a bit because I know you're going to be contemporaneously working
21 on a writ, and trying to get ready for trial. What timeframe would you suggest to me
22 that would be?

23 MR. YANEZ: Well, what I would suggest –

24 THE COURT: Including your trial schedules, your writ, and getting ready for
25 trial.

1 MR. YANEZ: Here's what I would suggest, since Ivette is not present, I think
2 we have a status check date next week or in two weeks. That status check date
3 was going to be to set the evidentiary hearing on the Atkins issue. What I would
4 ask, if we can -- on that date --

5 THE COURT: Sure.

6 MR. YANEZ: Ms. Maningo will be here, and we can set the trial, and we'll see
7 where we're at with the stay with the Supreme Court at that point as well.

8 THE COURT: State, could you prepare an order. I mean, it's not just the
9 delay -- I mean -- there's different reasons for the delay that weigh less on this ruling
10 than am comfortable that there's not going to be a probability on the merits, that I'm
11 setting the trial out far enough for them to seek a stay for the Supreme Court in the
12 event they disagree or want to have oral argument, and put that in an order.

13 MS. WECKERLY: Yes, Your Honor --

14 THE COURT: Okay; and can you run it by counsel before, you know, sign off
15 as to form and content counsel for the --

16 MR. YANEZ: Yes.

17 THE COURT: One of you.

18 MR. YANEZ: Yes.

19 MS. WECKERLY: -- I will -- previously, Judge Cory had ordered that the
20 Defense could be present while our expert was administering the test and that
21 ordered hasn't been disturbed.

22 My expert had planned on coming down here at the end of October,
23 then they filed the stay, so I just want to make sure that that testing can still go
24 forward.

25 THE COURT: Here's what I would ask, I'm denying the stay. I would ask you

1 to reschedule that appointment for the month of November; give them an addition –
2 at least 30 days more for them to seek a stay from the Supreme Court. I think that
3 is a reasonable accommodation. You know, now they've got to do the stay and – I
4 mean prepare the writ, get that going, and so it kind of loses its ability – they lose
5 their ability to ask for a stay from the Supreme Court that I didn't give down here, if
6 we don't give them a little wiggle room. So I would ask you to reschedule that; and
7 that gives you enough time to ask them.

8 MR. YANEZ: We appreciate that. Thank you.

9 THE COURT: I mean that's fair. And then when you come back October 5th,
10 or I can even push it out a little bit more for resetting of trial, then presumably, you
11 might've talked to your person by then and have a couple dates that you could
12 propose.

13 MS. WECKERLY: That's fine. We probably shouldn't set the trial though until
14 we know the hearing date, in my thinking, because that would affect how long the
15 trial is.

16 MR. YANEZ: I guess if we come back from –

17 THE COURT: If it's two days or nine months, the trial, it doesn't really matter
18 –

19 MS. WECKERLY: Okay.

20 THE COURT: -- you just get the date. I don't pay attention to any of that. I
21 mean, I'm just being honest. It might matter for you all, and if you're asking me to
22 hold off on setting the trial until I set the hearing, I'll do that.

23 MR. YANEZ: Well, I think we come back on October 5th, that's the next status
24 check date. We might have a better idea. Hopefully, we'll have already proceeded
25 to the Supreme Court. We might have a better idea of where we're at with all these

1 issues. And so my suggestion –

2 THE COURT: In a week, in ten days? I mean, are you sure you don't want to
3 push it out to maybe the 12th?

4 MR. YANEZ: We can, whatever the Court's preference is.

5 THE COURT: Because she has to consult with her expert and get some
6 alternative dates in November.

7 MS. WECKERLY: Yeah, and she's not local so –

8 THE COURT: Or December, whatever. I mean, you know, I know it's –

9 MS. WECKERLY: -- I'm fine with the 5th or the 12th.

10 THE COURT: All right, let's do October 12th at 9. And the understanding is
11 what we're going to discuss is setting an evidentiary hearing, and your experts
12 availability for a later date, to allow them a little time to seek a stay, because I'm
13 denying their request for a stay here.

14 MS. WECKERLY: Okay.

15 THE COURT: So even if it's, you know, mid-November, it just gives them
16 some time to ask for a stay.

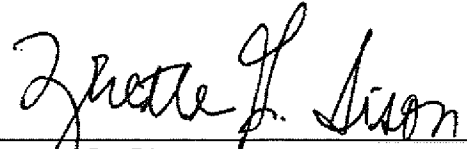
17 MR. YANEZ: Thank you, Judge.

18 THE COURT: Okay. Thank you.

19 [Proceedings concluded at 10:01 a.m.]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Yvette G. Sison
Court Recorder/Transcriber

Ex. “C”



ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
PAMELA WECKERLY
Chief Deputy District Attorney
Nevada Bar #006163
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GUSTAVO RAMOS,
#1516662

Defendant.

CASE NO: C-10-269839-1

DEPT NO: IX

ORDER DENYING DEFENDANT'S MOTION FOR STAY OF PROCEEDINGS

DATE OF HEARING: 09/26/2017
TIME OF HEARING: 9:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 26th day of September, 2017, the Defendant being present, represented by LANCE MANINGO, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through PAMELA WECKERLY, Chief Deputy District Attorney, and the Court having heard the arguments of counsel, the court denies the motion for a stay because it does not believe there is a probability of success on the merits, and good cause appearing therefor,

///

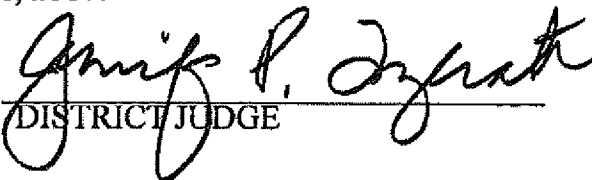
///

///

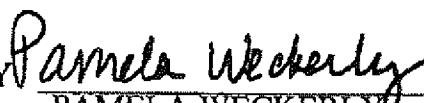
///

1 IT IS HEREBY ORDERED that the Defendant's Motion for Stay of Proceedings, shall
2 be, and it is DENIED.

3 DATED this 17th day of October, 2017.

4 
5 DISTRICT JUDGE

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

9 BY 
10 PAMELA WECKERLY
11 Chief Deputy District Attorney
12 Nevada Bar #006163
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

28 10F19783X/saj/MVU

CERTIFICATE OF MAILING

I hereby certify that on this 30th day of October, 2017, I served the foregoing MOTION FOR STAY OF DISTRICT COURT PROCEEDINGS in the case of GUSTAVO RAMOS V. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, COUNTY OF CLARK, THE HONORABLE JENNIFER P. TOGLIATTI, DISTRICT COURT JUDGE, Case No. C-10-269839-1, upon the following parties by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada, with first class postage fully prepaid:

ADAM PAUL LAXALT
Nevada Attorney General
100 N. Carson Street.
Carson City, Nevada 89701
Attorney for Respondent

STEVEN B. WOLFSON
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Attorney for Real Party in Interest State of Nevada

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

Honorable Jennifer P. Togliatti
Eighth Judicial District Court, Department IX
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89101
Respondent

/s/ Kathy Karstedt
Secretary for Nobles & Yanez, PLLC.