

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILBER ERNESTO MARTINEZ
GUZMAN,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT, IN AND FOR THE
COUNTY OF WASHOE; THE
HONORABLE CONNIE J.
STEINHEIMER, DISTRICT JUDGE,
Respondents,
and,
THE STATE OF NEVADA,
Real Party In Interest.

Electronically Filed
Mar 29 2021 03:20 p.m.
No. 82342 Elizabeth A. Brown
Clerk of Supreme Court

PETITIONER'S MOTION APPENDIX

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1 CODE NO. 2195
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11 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
12 IN AND FOR THE COUNTY OF WASHOE

13 THE STATE OF NEVADA,

14 Plaintiff,

15 vs.

Case No. CR19-0447

16 WILBER ERNESTO MARTINEZ
17 GUZMAN,

Department No. 4

18 Defendant.

19 MOTION FOR PARTIAL STAY OF PROCEEDINGS PENDING THE
20 RESOLUTION OF AN ORIGINAL PETITION FOR WRIT OF MANDAMUS
21 CURRENTLY IN THE NEVADA SUPREME COURT (D-29)

22 Defendant, Wilber Ernesto Martinez Guzman (Mr. Guzman) hereby moves for
23 a stay of that part of this Court's order filed on December 5, 2020, that requires him
24 to file a motion pursuant to NRS 174.098 "no later than April 12, 2021 at 5 p.m.",
25 pending the resolution of the original writ proceedings currently in the Nevada
26 Supreme Court, docket number 82342.

1 This motion is based on the declaration of counsel, the memorandum of
2 points and authorities accompanying this motion, as well as, any other matters
3 that might be brought to the Court's attention prior to a ruling on this request for
4 a stay.

5
6 The undersigned hereby affirm, pursuant to NRS 239B.030, that this
7 document does not contain the social security number of any person.

8 DATED this 25th day of February 2021.

9
10 JOHN L. ARRASCADA
Washoe County Public Defender

11 By: John Reese Petty
12 JOHN REESE PETTY
13 Chief Deputy Public Defender

14 DECLARATION OF COUNSEL

15 Pursuant to NRS 53.045 I declare under penalty of perjury that the following
16 assertions are true and correct:

17
18 1. I am an attorney duly licensed to practice law in the State of Nevada. I am
19 a Chief Deputy in the Washoe County Public Defender's Office. I am Mr. Guzman's
20 appellate counsel.

21
22 2. In that capacity I represent Mr. Guzman in that matter titled "Martinez
23 Guzman v. Second Judicial District Court", docket number 82342, which is an
24 original petition for writ of mandamus that asks the Nevada Supreme Court to
25 vacate that part of this Court's order setting April 12, 2021, as the filing deadline

1 for Mr. Guzman's *Atkins* motion under NRS 174.098(1).¹ On February 18, 2021, the
2 Supreme Court filed an order directing the real party in interest to "file and serve
3 an answer, including authorities, against issuance of the requested writ." Under
4 that order the State's answer is due on or before March 18, 2021. Mr. Guzman's
5 reply is due within "14 days from service of the answer[.]"
6

7 3. Conservatively, briefing in the Supreme Court will be completed on April 1,
8 2021, or eleven days before the filing deadline for the motion under NRS 174.098(1).
9 Even if briefing is completed sooner, it is unlikely, though not impossible, that the
10 Supreme Court will decide the merits of the writ before the April 12, 2021 filing
11 deadline set by this Court. Without a stay, the object of the petition will be defeated.
12

13 4. This motion for stay is brought in good faith and not solely for purpose of
14 delay or for any other improper purpose.
15

16 By: 
17

18 JOHN REESE PETTY
19 Chief Deputy Public Defender
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¹ *Atkins v. Virginia*, 536 U.S. 304 (2002).

MEMORANDUM OF POINTS AND AUTHORITIES

Introduction

On December 5, 2020 this Court filed an order that requires in part:

If Mr. Guzman chooses to file a motion pursuant to NRS 174.098, he must do so no later than April 12, 2021 at 5 p.m., the State to respond within ten (10) days of service of the motion.

Pursuant to that same order, trial is set to commence on September 20, 2021.

On January 14, 2021, Mr. Guzman filed an original petition for writ of mandamus asking the Nevada Supreme Court to issue a writ of mandamus directing this Court to vacate that part of its order quoted above, as well as, related provisions stemming from this deadline.

NRS 174.098(1) states: “[a] defendant who is charged with murder of the first degree in a case in which the death penalty is sought may, not less than 10 days before the date set for trial, file a motion to declare that the defendant is intellectually disabled.” Mr. Guzman’s petition argues that because NRS 174.098(1) vests discretion *in the defendant* to file a motion to declare that the defendant is intellectually disabled and limits or cabins the exercise of that discretion only in so far as the motion must be filed “not less than 10 days before the date set for trial”, this Court manifestly abused its discretion by setting April 12, 2021 as the filing deadline for a motion under NRS 174.098(1) where, as here, trial is set to commence some five months later, on September 20, 2021.

On February 18, 2021, the Supreme Court filed an order directing the Real Party in Interest (the State), to file an answer against issuance of the requested writ

1 on or before March 18, 2021. The Court gave Mr. Guzman fourteen days from the
2 date of service of the State's answer in which to file a reply. Assuming the State files
3 its answer on March 18, 2021, the reply will be due on April 1, 2021. Because it is
4 unlikely that the Supreme Court will resolve the writ within eleven days of the filing
5 of the reply (or even before April 12, 2021, if the parties are able to file the respective
6 answer and reply ahead of the schedule set by the Supreme Court), Mr. Guzman
7 seeks a stay of the April 12, 2021 filing deadline pending resolution of the pending
8 writ petition. Without a stay, the purpose of the writ will be defeated.
9

10 Unlike a direct appeal, where the filing of the notice of appeal operates to
11 divest the district court of jurisdiction, see e.g. Buffington v. State, 110 Nev. 124,
12 868 P.2d 643 (1994) (jurisdiction of appeal is vested solely in the supreme court until
13 remittitur issues to district court), a "district court does not lose jurisdiction over a
14 case merely because a litigant files an interlocutory petition for an extraordinary
15 writ." *Ellis v. U.S. Dist. Court for the Western Dist. of Washington (Tacoma)*, 360
16 F.3d 1022, 1023 (9th Cir. 2004). A request to stay district court proceedings must
17 first be presented to the district court. See Rule 8(a)(1) of the Nevada Rules of
18 Appellate Procedure (providing that a party must seek a stay in the district court
19 pending resolution of a petition to the Supreme Court for an extraordinary writ).
20

21 Standards for granting a stay

22 In *Hansen v. Eighth Judicial Dist. Court*, 116 Nev. 650, 657, 6 P.3d 982, 986
23 (2000), the Supreme Court identified four factors to be considered when deciding a
24 motion for a stay:
25
26

- (1) Whether the object of the appeal or writ petition will be defeated if the stay is denied;
- (2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay is denied;
- (3) Whether respondent/real party in interest will suffer irreparable or serious injury if the stay is granted; and
- (4) Whether appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

In *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 245, 251, 89 P.3d 36, 38 (2004), the Court added, “[w]e have not indicated that any one factor carries more weight than the others, although [*Hansen*] recognizes that if one or two factors are especially strong, they may counterbalance other weak factors.”

Where the first factor is especially strong because the object of the petition will be defeated without a stay, it takes precedence and the opposing party can defeat the stay motion *only* by “making a strong showing that appellate relief is unattainable.” *Id.* at 253, 89 P.3d at 40. Here the State would have to demonstrate that the writ petition “appears to be frivolous or the stay [is] sought purely for dilatory purposes.” *State v. Robles v. Nieves*, 129 Nev. 537, 546, 306 P.3d 399, 406 (2013); and *McCrea*, 120 Nev. at 253, 89 P.3d at 40 (noting that “if the appeal appears frivolous or if the appellant apparently filed the stay motion purely for dilatory purposes, the court should deny the stay”). In contrast, the moving party does not have to establish an absolute probability of success on the merits to be granted a stay. Instead, the moving party need only “present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.” *Hansen*, 116 Nev. at 659, 6 P.3d at 987 (internal quotation marks and citation omitted).

1 Here the first and third factors are interrelated and are met: The object of the
2 writ petition will be defeated, resulting in legal harm to Mr. Guzman if a stay is not
3 granted by this Court because without a stay the filing deadline for a motion under
4 NRS 174.098(1) will arrive on April 12, 2021, and it is this deadline that the writ
5 seeks to have vacated. In *McCrea* the Supreme Court said, “absent a strong showing
6 that the [writ] lacks merit or that irreparable harm will result [to the opposing
7 party] if a stay is granted, *a stay should issue to avoid defeating the object of the*
8 *appeal.*” 120 Nev. at 251-52, 89 P.3d at 38 (italics added). The fact that the Supreme
9 Court has directed the State to file an answer to the writ petition and has granted
10 Mr. Guzman leave to file a reply to that answer, means it cannot be seriously argued
11 that the writ lacks merit or exists for some improper or dilatory purpose. Conversely,
12 because trial is set to commence some five months later, the State will not suffer
13 irreparable harm if the stay is granted pending resolution of the writ petition by the
14 Supreme Court.
15

16
17 Mr. Guzman’s writ petition involves a serious legal question involving the
18 interpretation and application NRS 174.098(1). It likewise presents a substantial
19 case on the merits because the plain language of the statute dictates the result
20 sought by the writ. The Nevada Supreme Court “reviews questions of statutory
21 interpretation de novo.” *Martinez Guzman v. Second Judicial Dist. Court*, 136 Nev.
22 103, 106, 460 P.3d 443, 447 (2020) (citations omitted); *In re P.S.*, 131 Nev. 955, 956,
23 364 P.3d 1271, 1271 (2015); *Cote H. v. Eighth Judicial Dist. Court*, 124 Nev. 36, 40,
24 175 P.3d 906, 908 (2008) (“Even when raised in a writ petition, this court reviews
25
26

1 questions of statutory interpretation de novo.”). Additionally, when the meaning of
2 the statutory language is clear, the analysis ends. *In re P.S.*, 131 Nev. at 956, 364
3 P.3d at 1271 (stating that “when the language of a statute is plain and
4 unambiguous, such that it is capable of only one meaning, this court should not
5 construe that statute otherwise.”) (internal quotation marks, citation omitted); and
6 *State v. Second Judicial Dist. Court (Radonski)*, 136 Nev. Adv. Op. 23, 462 P.3d 671,
7 674 (2020) (“[Every word, phrase, and provision of a statute is presumed to have
8 meaning.”) (quoting *Butler v. State*, 120 Nev. 879, 893, 102 P.3d 71, 81 (2004)
9 (internal quotation marks omitted, alteration in the original). Here, the language of
10 NRS 174.098(1) is plain and unambiguous.
11

12
13 Finally, the equities weigh heavily in favor of granting the stay. The State has
14 filed its notice of intent to seek the death penalty if Mr. Guzman is convicted of first-
15 degree murder. The United States Supreme Court has held that the death penalty
16 is not a sentencing option for convicted first-degree murder defendants who are
17 intellectually disabled. See *Atkins v. Virginia*, 536 U.S. at 321 (concluding that the
18 execution of intellectually disabled criminals did not “measurably advance the
19 deterrent or the retributive purpose of the death penalty” and holding that “such
20 punishment is excessive and that the Constitution places a substantive restriction
21 on the State’s power to take the life of [an intellectually disabled] offender.”)
22 (internal quotation marks and citation omitted). The purpose of NRS 174.098 is to
23 give effect to *Atkins*’ holding. See *Ybarra v. State*, 127 Nev. 47, 53, 247 P.3d 269,
24 273 (2011) (noting that the United States Supreme Court left “to the State[s] the
25

1 task of developing appropriate ways to enforce [this] constitutional restriction upon
2 ... execution[s]" and, in Nevada, the Legislature "accomplished that task with the
3 passage of NRS 174.098, which sets forth the procedure for raising [intellectual
4 disability] claims in a capital case[.]"). Without a stay, that purpose too may be
5 defeated.
6

7 CONCLUSION

8 Where, as here, the object of the writ will be defeated if a stay is not granted,
9 this Court should issue the requested stay pending the resolution of Mr. Guzman's
10 writ petition.
11

12 DATED this 25th day of February 2021.

13 JOHN L. ARRASCADA
14 Washoe County Public Defender

15 By: John Reese Petty
16 JOHN REESE PETTY
17 Chief Deputy Public Defender
18
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office, Reno, Washoe County, Nevada, and that on this date electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Chris Hicks, Washoe County District Attorney
Mark Jackson, Douglas County District Attorney
Travis Lucia, Deputy Washoe County District Attorney
Marilee Cate, Deputy Washoe County District Attorney

Dated this 25th day of February 2021.

John Reese Petty
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7 Attorney for State of Nevada

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
9
10 IN AND FOR THE COUNTY OF WASHOE.

11 * * *

12 THE STATE OF NEVADA,

13 Plaintiff,

14 Case No. CR19-0447

15 v.

16 Dept. No. D4

17 WILBER ERNESTO MARTINEZ GUZMAN,
18 Defendant.
19 _____/

20 OPPOSITION TO MOTION FOR PARTIAL STAY OF PROCEEDINGS PENDING THE
21 RESOLUTION OF AN ORIGINAL PETITION FOR WRIT OF MANDAMUS CURRENTLY IN
22 THE NEVADA SUPREME COURT (D-29)

23 COMES NOW, the State of Nevada, by and through CHRISTOPHER
24 J. HICKS, District Attorney of Washoe County, and MARK JACKSON,
25 District Attorney of Douglas County, and hereby enters this
26 "Opposition to Motion for Partial Stay of Proceedings Pending the
Resolution of an Original Petition for Writ of Mandamus Currently in
the Nevada Supreme Court (D-29)."

This Opposition is based upon the following Points and
Authorities, all pleadings and papers on file herein, and any oral
and/or documentary evidence that may be presented at a hearing on
this matter.

1 POINTS AND AUTHORITIES

2 I. FACTUAL BACKDROP

3 On July 29, 2019, the Court was informed that WILBER
4 ERNESTO MARTINEZ GUZMAN (hereafter "Defendant") anticipated filing a
5 motion pursuant to NRS 174.098. Transcript, July 29, 2019, pg. 8: 2-
6 3. The Court set aside July 27, 2020 for a hearing to address any
7 motion filed pursuant to NRS 174.098.

8 Trial was subsequently continued and is now set to commence
9 September 20, 2021. The Court revised its earlier timeline for the
10 hearing and disposition of any motion filed pursuant to NRS 174.098.
11 The Court set April 12, 2021 as the deadline for the filing of any
12 motion pursuant to NRS 174.098 with a hearing to occur May 17, 2021
13 through May 28, 2021. The Defendant did not file a motion for
14 reconsideration with respect to the scheduling order nor did the
15 Defendant address the issue whatsoever with the District Court,
16 opting instead to seek relief via writ to the Nevada Supreme Court on
17 January 14, 2021. On February 25, 2021, the Defendant now seeks a
18 stay from this Court with respect to the April 12, 2021 filing
19 deadline.

20 II. ARGUMENT

21 The Nevada Legislature and Nevada Supreme Court have not
22 specifically delineated factors for a District Court to consider when
23 addressing the propriety of a request for a stay. However, some
24 guidance can be found by resort to the factors outlined in State v.
25 Robles-Nieves, 129 Nev. 437, 402 (2013) and Hansen v. Eighth Judicial

26 ///

1 Dist. Court, 116 Nev. 650, 657 (2000). Consideration of the same
2 compels the conclusion that the instant request should fail.

3
4 **A. THE OBJECT OF THE WRIT WILL NOT BE DEFEATED IF THE
5 STAY IS DENIED.**

6 The object of the Defendant's writ is to divest the Court
7 of its ability to prescribe deadlines in conformity with the plain
8 language of a statute. Said more specifically, the object of his
9 Writ is to delay the filing of his motion pursuant to NRS 174.098.
10 Should this Court deny his request for a stay, the object of his writ
11 will not be defeated.

12 First, this Court is not the sole and final arbiter of a
13 decision to stay this portion of the proceedings pending a writ
14 before the Nevada Supreme Court. As the Defendant concedes, a
15 request to stay the proceeding must be made first in the district
16 court as a predicate to the re-litigation of the same issue later.
17 Motion (D-29), pg. 5: 18-23. Thus, as a matter of logic, this Court
18 could deny his request for a stay and he might nevertheless be
19 successful in obtaining the same relief from the Supreme Court - both
20 in terms of the request to stay the proceedings as well as the
21 ultimate issue he embraces within his Writ. As such, it cannot be
22 said that the object of the writ will be defeated if this Court
23 denies his request for a stay.

24 Second, the Defendant concedes it's possible that the
25 pending appellate issue could be resolved by the Nevada Supreme Court
26 prior to the April 12th deadline set by this Court. Motion (D-29),
pg. 3: 9-10. Given the briefing schedule before the Nevada Supreme

1 Court, it is not impossible that the Supreme Court will decide the
2 merits of the writ before the April 12, 2021 filing deadline set by
3 this Court. Therefore, it simply does not follow that the object of
4 his writ would be defeated should this Court deny his request for a
5 stay.

6 Finally, the Court entered a "Pre-Trial Order" on July 29,
7 2019 which provided a framework for the consideration and review of
8 any motions filed beyond the November 1, 2019 deadline. Upon a
9 predicate showing of good cause, either party could supplement the
10 record with additional motion practice. Should the Defendant be
11 unable to file his Atkins motion prior to April 12, 2021, he could
12 nevertheless seek a later filing assuming he had good cause to
13 justify it. For that reason, it cannot be said that the object of
14 his writ would be defeated should this Court deny his request for a
15 stay.

16 **B. THE PETITIONER [DEFENDANT] WILL NOT SUFFER
17 IRREPERABLE OR SERIOUS INJURY IF THE STAY IS DENIED.**

18 Should the Court deny the request for a stay, the Defendant
19 will not suffer irreparable or serious injury. The State remains
20 aware that it intends to seek the death penalty in this case.¹ The
21 State also remains aware that the same penalty would be unavailable
22 should the Defendant's motion pursuant to NRS 174.098 be successful.
23 That said, the Court should not conflate the issue presently before
24 it with the potential outcome of this litigation.

25 If denied, the Defendant would re-litigate this exact same
26 issue of the granting or denial of a stay before the Nevada Supreme

¹ Notice of Intent to Seek Death Penalty, March 14, 2019.

1 Court. If denied, the Defendant could seek to show that good cause
2 justified the filing of his Atkin's motion post-April 12th. If
3 denied, the Defendant could file his motion in conformity with this
4 Court's order and upon the back of an investigation which would have
5 conservatively spanned approximately one (1) year, eight (8) months,
6 and fourteen (14) days.²

7 These options are all available to the Defendant should the
8 Court deny his request for a stay and would allow for the
9 continuation of the litigation of this request or of the Court's
10 consideration of his Atkin's claim. As such, the second factor
11 weighs against the granting of his motion.

12 **C. THE RESPONDENT [STATE] WILL SUFFER IRREPERABLE OR**
13 **SERIOUS INJURY IF THE STAY IS GRANTED.**

14 Conversely, the State will suffer irreparable or serious
15 injury if the stay is granted. As all participants to this case
16 know, the matter has been continued due to circumstances beyond the
17 direct control of all involved. This has undoubtedly benefitted the
18 Defendant as it has allowed for more time to conduct additional
19 investigation into his intellectual disability motion. To the
20 contrary, the effects of time wear on the recollection, health, and
21 availability of the witnesses that the State would use to support its
22 case in chief.

23 By granting a request to stay any filing of his motion
24 pursuant to NRS 174.098, the dual effect would be to delay the
25 occurrence of the Trial in this matter. As the law makes clear, if

26 ² Starting with the Defendant's announcement of his intent to file said motion on
July 29, 2019 to the motion's due date of April 12, 2021.

1 and when a motion is filed pursuant to NRS 174.098, the entire case
2 must be stayed pending a decision on the issue of intellectual
3 disability. NRS 174.098(2)(a). Thus, to delay the filing of such a
4 motion would guarantee that the same motion would be filed closer to
5 trial. With the mandatory stay of the trial brought about by the
6 filing of the motion, the trial date presently set becomes an
7 illusion. So, another continuance would be necessary, the date
8 presently set for trial would be vacated, and a new date set in the
9 far future. All the while, the State's case, preserved in the
10 recollection and presence of witnesses to the investigation of the
11 Defendant's conduct, would wane and fade. For that reason, the Court
12 should deny the Defendant's request.

13 **D. THE PETITIONER [DEFENDANT] IS UNLIKELY TO PREVAIL ON**
14 **THE MERITS.**

15 The State and Defendant disagree regarding the strength of
16 his argument. As stated above, the essence of the Defendant's claim
17 is that this Court lacks the authority and discretion to set
18 timeframes beyond what is expressly delineated in the statute.

19 This Court acted well within its discretion to set
20 procedural deadlines to manage this litigation. See e.g. Borger v.
21 Eighth Judicial District Court, 120 Nev. 1021, 1029 (2004)
22 (explaining that the judiciary has the inherent power to administer
23 its affairs and that district courts have discretion over the
24 procedural management of litigation). The Defendant raises a
25 discretionary issue in his Writ, so his burden is substantial, and he
26 must show a clear legal right to have this Court's filing deadline

1 vacated. See Walker v. Second Judicial Dist. Ct. (Michaels), 136
2 Nev. Adv. Op. 80, *5 (2020) ("Where a district court is entrusted
3 with discretion on an issue the petitioner's burden to demonstrate a
4 clear legal right to a particular course of action is substantial...")
5 (*emphasis in original*). There are a myriad of reasons why Defendant
6 will be unable to meet his burden but, in the interest of brevity,
7 the State provides the following.

8 One of the express purposes of Supreme Court Rule 250 is
9 "to facilitate the just and expeditious final disposition of all
10 capital cases." SCR 250(1). In order to fulfill this purpose and
11 avoid yet another delay of the trial, this Court set a deadline for
12 Defendant's Atkins motion approximately 5 months before trial. The
13 Court has set aside two weeks for the Atkins hearing so each side can
14 present all relevant witnesses and evidence. It has also given
15 itself time to render a decision on this important issue and give the
16 parties time to prepare for trial after the issue is decided. Thus,
17 the current schedule will minimize potential error that could occur
18 if this issue was decided on a condensed schedule. See SCR
19 250(1) (providing that another purpose of the rule is to "minimize the
20 occurrence of error in capital cases..."). In other words, this
21 Court's deadline is consistent with the purposes stated in SCR 250.

22 In addition, the plain language of the statute comports
23 with the Court's filing deadline. In relevant part, NRS 174.098(1)
24 states:

25 A defendant who is charged with murder of
26 the first degree in a case in which the
death penalty is sought may, *not less*

1 than 10 days before the date set for
2 trial, file a motion to declare that the
3 defendant is [intellectually disabled].
4 [emphasis added].

5 The law requires that the motion be filed "not less than 10
6 days before the date set for trial." Trial is presently set for
7 September 20, 2021. The Court ordered that the Defendant's motion is
8 due April 12, 2021. April 12, 2021 is not less than 10 days before
9 the date set for trial. Thus, the plain language of the law comports
10 with the Court's deadline.

11 In contrast, the Defendant's interpretation of that same
12 provision would require that portions of the statutory text be
13 changed. In essence, the Defendant would require that the law state
14 that the filing of such a motion must occur 10 days before the trial,
15 not sooner, not later. That is not what the law says. It thus
16 strains the imagination of the State to arrive at that conclusion
17 when the text makes clear that the Court's deadline is expressly
18 allowed.

19 What's more, there is no temporal limitation on that
20 language beyond what is provided in the statute. For instance, the
21 law does not state that the motion must be filed 10 days before the
22 trial, but not more than 90 days before the trial. To restate what
23 is argued above, the Defendant's argument rests on the substitution
24 of plain text with language that he has created out of the ether.

25 The fact that the Supreme Court has directed the State to
26 file an answer to the writ and given the Defendant a chance to reply
27 is likewise not an accurate predictor of the success of the
28 Defendant's argument. If that were so, the success rate of

1 petitioners to the Nevada Supreme Court would inarguably be much
2 higher.

3 Finally, the State notes that the Defendant never sought to
4 litigate this issue before the same Court in which it now argues must
5 stay its decision. If he were convinced that this Court was wrong on
6 the law, he could have sought reconsideration of the Court's
7 scheduling order or filed a motion along similar lines. Curiously,
8 when the Court set advanced deadlines for expert notification,
9 provision of discovery, and the filing of his Atkins motion
10 previously, he did not object. Despite that backdrop, he now asserts
11 a constitutional violation has emerged. This tactical decision
12 should be seen as just that. It should also be well understood to
13 operate as a concession regarding the ultimate strength of his
14 position.

15 **III. CONCLUSION**

16 For any and all of the reasons stated above, the
17 Defendant's motion should be denied.

18
19 **AFFIRMATION PURSUANT TO NRS 239B.030**

20 The undersigned does hereby affirm that the preceding
21 document does not contain the social security number of any person.

22 DATED this 8th day of March, 2021.

23
24
25 /s/ Christopher Hicks
CHRISTOPHER HICKS
26 DISTRICT ATTORNEY

/s/ Mark Jackson
MARK JACKSON
DISTRICT ATTORNEY

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/s/ Tillena Hicks
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9 Reno, Nevada 89501

10 Attorneys for Defendant

11 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
12 IN AND FOR THE COUNTY OF WASHOE

13 THE STATE OF NEVADA,

14 Plaintiff,

15 vs.

Case No. CR19-0447

16 WILBER ERNESTO MARTINEZ
17 GUZMAN,

Department No. 4

18 Defendant.

19 REPLY TO OPPOSITION TO MOTION FOR PARTIAL STAY OF PROCEEDINGS
20 PENDING THE RESOLUTION OF AN ORIGINAL PETITION FOR WRIT OF
21 MANDAMUS CURRENTLY IN THE NEVADA SUPREME COURT (D-29)

22 Defendant, Wilber Ernesto Martinez Guzman (Mr. Guzman), submits the
23 following in reply to the State's oppositions to his motion for a partial stay of
24 proceedings pending the resolution of his petition for writ of mandamus by the
25 Nevada Supreme Court. On March 8, 2021, the State filed the same opposition at
26 11:34:24 a.m. and at 1:22:12 p.m. Although differing in minor formatting details,

1 they are identical in wording. This single reply is in response to both oppositions but
2 will refer to the first filed opposition for target responses.

3 ARGUMENT IN REPLY

4 The State first argues that neither the legislature nor the Nevada Supreme
5 Court have “specifically delineated factors for a District Court to consider when
6 addressing the propriety of a request for a stay.” Opposition at 2. But in *Hansen v.*
7 *Eighth Judicial Dist. Court*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000), the Supreme
8 Court identified four factors to be considered when deciding a motion for a stay, and
9 in *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 245, 251, 89 P.3d 36, 38 (2004), the
10 Court explained that the factors were not of equal weight: “[w]e have not indicated
11 that any one factor carries more weight than the others, although [*Hansen*]
12 recognizes that if one or two factors are especially strong, they may counterbalance
13 other weak factors.” Thus, contrary to the State’s argument, the Nevada Supreme
14 Court has provided district courts clear guidance for deciding stay requests. And in
15 his initial motion, Mr. Guzman applied the *Hansen* factors to his request for partial
16 stay to demonstrate why a partial stay was necessary; specifically, that without a
17 stay the object of the writ petition will be defeated.

18 The State next argues that this Court need not grant the stay because Mr.
19 Guzman can seek a stay in the Nevada Supreme Court. Opposition at 3 (“[T]his
20 Court is not the sole and final arbiter of a decision to stay[.]”). The State invites this
21 Court to simply pass off to the Supreme Court a decision that is within its power to
22 make. In doing so, the State asks this Court to waste judicial resources by having
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1 the Supreme Court weigh in on a procedural motion easily resolvable by this Court.
2 The Court should reject the State's invitation. Instead, the Court should grant the
3 partial stay pending resolution of the writ petition by the Nevada Supreme Court.
4

5 Next, the State argues that the Court should deny the stay because the
6 Supreme Court *could* rule on the merits of Mr. Guzman's petition before the April
7 12, 2021 deadline. Opposition at 3-4. While it certainly is possible that the Supreme
8 Court could render a merits opinion or order on the writ petition before April 12,
9 2021, the previous writ history in this case does not favor that possibility. Similarly,
10 the State's suggestion that even if the Court's April 12, 2021 filing deadline passes
11 without a stay Mr. Guzman can later supplement his *Atkins* motion under NRS
12 174.098, provided he can show "good cause to justify it", Opposition at 4-5, ignores
13 the Legislature's express grant to the defendant the right to file such a motion,
14 where appropriate, and the timeframe in which to file it. Recall, NRS 174.098(1)
15 states: "[a] defendant who is charged with murder of the first degree in a case in
16 which the death penalty is sought *may, not less than 10 days before the date set for*
17 *trial, file* a motion to declare that the defendant is intellectually disabled." (italics
18 added). This timeframe was discussed during legislative hearings on Assembly Bill
19 15 held in 2003. See generally Seventy-Second Session of the Nevada Legislature:
20 *Minutes of the Meeting of the Assembly Committee on Judiciary*, held on February
21 12, 2003 and February 25, 2003 (noting Assemblyman Horne's comment that "10
22 days was appropriate; 30 days was 'far out.'"). Thus, where, as here, the trial is more
23 than five months away, the State's attempt to cement Mr. Guzman's *Atkins* motion
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1 to the April 12, 2021 filing deadline subject only to a “good-cause”-conditioned
2 supplemental filing standard that is not envisioned by the plain language of the
3 statute, must fail.

4
5 The State also suggests that the partial stay sought by Mr. Guzman will cause
6 it irreparable harm. Opposition at 5-6. But it couches that harm, if any, in the
7 eventual processes established in NRS 174.098, not on the instant partial stay
8 request. Here, the State argues that upon the filing of a motion under NRS
9 174.098(1) the Court must stay the proceedings and hold a hearing, which is true.
10 But the State’s argument, as such, is with the Legislature and, as noted above, that
11 body discussed and approved the not less than 10 days before trial language
12 contained in the statute. Notably, so did the District Attorney’s Association. See
13 *Minutes of the Meeting of the Assembly Committee on Judiciary*, held on February
14 12, 2003 (Chief Deputy Washoe County District Attorney Kristin Erickson,
15 representing the Nevada District Attorney’s Association “gave her support to A.B.
16 15 with the amendment by Mr. [Clark A.] Peterson [Chief Deputy District Attorney,
17 Clark County].”). Mr. Clark’s amendment provided the not less than 10 days before
18 trial language.

19
20
21 The State later quizzically argues that since April 12, 2021 “is not less than
22 10 days before the date set for trial, ... [t]he plain language of the law comports with
23 the Court’s deadline.” Opposition at 8. Under the State’s interpretation, the Court
24 could set any filing deadline under the statute so long as it was not less than 10 days
25 before trial. The statute, however, grants the decision to file, and, importantly, when

1 to file such a motion to *the defendant*, not the Court. The State also argues that Mr.
2 Guzman contends that such a motion “must occur 10 days before trial, not sooner,
3 not later.” *Id.* Again, the State is mistaken. Mr. Guzman’s election to file a motion
4 under NRS 174.098(1) can be made by him at any time so long as it is not less than
5 10 days before trial. So he can file sooner, if he elects, but certainly not later than
6 10 days before trial.
7

8 The State inexplicably argues that the “essence of the Defendant’s claim is
9 that this Court lacks the authority and discretion to set timeframes beyond what is
10 expressly delineated in the statute.” Opposition at 6. Not so. The “essence” of Mr.
11 Guzman’s position is that the Legislature has provided a means to seek a
12 declaration that a defendant is intellectually disabled—by “a motion”—and has
13 specifically provided for when such a motion may be filed—“not less than 10 days
14 before the date set for trial.” The Legislature did not include language such as
15 “unless otherwise ordered by the court” and therefore compliance with the statute,
16 as written, is required. In this regard, the State’s reliance on *Borger v. Eighth*
17 *Judicial Dist. Court*, 120 Nev. 1021, 102 P.3d 600 (2004), Opposition at 6-7, is
18 misplaced as it supports Mr. Guzman’s position. *Borger* involved an interpretation
19 of NRS 41A.071, which required the district court to dismiss a medical malpractice
20 action, without prejudice, if the action is filed without a supporting affidavit by a
21 medical expert. As relevant here, the Supreme Court noted that NRS 41A.071 was
22 “silent as to whether a district court may grant leave to amend where compliance
23 with it is lacking,” but concluded, “[n]otwithstanding this omission,” that the statute
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25

1 required “dismissal without leave to amend, for complete failure to attach an
2 affidavit to the complaint.” 120 Nev. at 1029, 102 P.3d 606. The Court, in contrast,
3 said that a district court could grant leave to amend in lieu of dismissal where “a
4 legitimate dispute over whether a *filed* affidavit of merit complies with the statute.”
5 *Id.* (italics added). This interpretation of the statute, the Court said, was “consistent
6 with well-recognized notions of separation of legislative and judicial powers.” *Id.*
7 The separation of powers issue presented in *Borger* is not present here. Indeed, the
8 State’s argument—that under the guise of discretion the Court can ignore the
9 express command of a statute—turns the doctrine of separation of powers on its
10 head.
11

12
13 Finally, the State attempts to enlist the aid of Supreme Court Rule 250.
14 Opposition at 7. But NRS 174.098 can and should be read harmoniously with the
15 Court’s rules governing death penalty cases and nothing in Rule 250 ellipsis the
16 express language of NRS 174.098(1). Indeed, if the Court ultimately concludes that
17 Mr. Guzman is intellectually disabled, the Court will be required to “make such a
18 finding in the record and strike the notice of intent to seek the death penalty.” NRS
19 174.098(6).
20

21 CONCLUSION

22 NRS 174.098(1) vests discretion in the defendant to file a motion to declare
23 that the defendant is intellectually disabled and limits the exercise of that discretion
24 only in so far as the motion must be filed “not less than 10 days before the date set
25 for trial.” Notwithstanding this plain language this Court has set April 12, 2021 as
26

1 the filing deadline for a motion under NRS 174.098(1) even though trial is set to
2 commence some five months later, on September 20, 2021.

3 The propriety of the Court's order is under review by the Nevada Supreme
4 Court. Because it is unlikely that the Supreme Court will issue a merits opinion or
5 order before April 12, 2021, and because the object of the writ will be defeated if a
6 stay is not granted, this Court should issue the requested stay.
7

8 DATED this 9th day of March 2021.

9
10 JOHN L. ARRASCADA
Washoe County Public Defender

11 By: John Reese Petty
12 JOHN REESE PETTY
13 Chief Deputy Public Defender

14 CERTIFICATE OF SERVICE

15 I hereby certify that I am an employee of the Washoe County Public
16 Defender's Office, Reno, Washoe County, Nevada, and that on this date
17 electronically filed the foregoing with the Clerk of the Court by using the ECF
18 system which will send a notice of electronic filing to the following:
19

20 Chris Hicks, Washoe County District Attorney
21 Mark Jackson, Douglas County District Attorney
22 Travis Lucia, Deputy Washoe County District Attorney
Marilee Cate, Deputy Washoe County District Attorney

23 Dated this 9th day of March 2021.

24 John Reese Petty
25 JOHN REESE PETTY
26 Chief Deputy Public Defender

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14 ATTORNEYS FOR DEFENDANT

15 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

16 IN AND FOR THE COUNTY OF WASHOE

17 THE STATE OF NEVADA,

18 Plaintiff,

CASE NO: CR19-0447

19 v.

DEPT. NO.: 4

20 WILBER ERNESTO MARTINEZ GUZMAN,

21 Defendant.

22 REQUEST FOR SUBMISSION OF MOTION FOR PARTIAL STAY OF
23 PROCEEDINGS PENDING THE RESOLUTION OF AN ORIGINAL
24 PETITION FOR WRIT OF MANDAMUS CURRENTLY IN THE NEVADA
25 SUPREME COURT (D-29)

26 COMES NOW, Wilber Ernesto Martinez Guzman, by and through his
attorneys of record, Washoe County Public Defender, John L. Arrascada, Gianna
Verness, Joseph Goodnight and Kathryn Hickman, filed his *Motion For Partial Stay*
of Proceedings Pending The Resolution of An Original Petition For Writ of
Mandamus Currently In The Nevada Supreme Court (D-29) filed on February 25,

1 2021. The State filed their Opposition on March 8, 2021. Defendant filed his Reply
2 on March 9, 2021.

3 It is respectfully requested that the *Motion For Partial Stay of Proceedings*
4 *Pending The Resolution of An Original Petition For Writ of Mandamus Currently In*
5 *The Nevada Supreme Court (D-29)* be submitted to the court for decision.

6 AFFIRMATION PURSUANT TO NRS 239B.030

7 The undersigned does hereby affirm that the preceding document does not
8 contain the social security number of any person.

9 DATED this 9th day of March, 2021.

10
11 JOHN L. ARRASCADA
12 Washoe County Public Defender

13 By /s/ John L. Arrascada
14 JOHN L. ARRASCADA
15 Washoe County Public Defender

16 By /s/ Gianna Verness
17 GIANNA VERNES
18 Chief Deputy Public Defender

19 By /s/ Joseph Goodnight
20 JOSEPH GOODNIGHT
21 Chief Deputy Public Defender

22 By /s/ Katheryn Hickman
23 KATHERYN HICKMAN
24 Chief Deputy Public Defender
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office, and that on this date I electronically filed the foregoing document with the Clerk of the Court by using the ECF system which will send a Notice of Electronic Filing to the following:

Chris Hicks
District Attorney's Office

Travis Lucia
Washoe County Deputy District Attorney

Mark Jackson
Douglas County District Attorney

DATED this 9th day of March, 2021.

/s/ Carinne Glines
CARINNE M. GLINES

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JUDITH ANN SCHONLAU
CCR #18
75 COURT STREET
RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

-o0o-

THE STATE OF NEVADA,)	
)	
Plaintiff,)	
)	
vs.)	CASE NO. CR19-0447
)	DEPARTMENT NO. 4
WILBER MARTINEZ GUZMAN,)	
)	
Defendant.)	
_____)	

TRANSCRIPT OF PROCEEDINGS
STATUS HEARING
MONDAY, MARCH 29, 2021, 11:00 A.M.
Reno, Nevada

Reported By: JUDITH ANN SCHONLAU, CCR #18
NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER
Computer-aided Transcription

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A P P E A R A N C E S

FOR THE PLAINTIFF: OFFICE OF THE DISTRICT ATTORNEY

 BY: CHRISTOPHER HICKS, ESQ.

 DISTRICT ATTORNEY

 TRAVIS LUCIA, ESQ.

 DEPUTY DISTRICT ATTORNEY

 1 S. SIERRA STREET

 RENO, NEVADA

 DOUGLAS COUNTY DISTRICT ATTORNEY

 BY: MARK JACKSON, ESQ.

 DISTRICT ATTORNEY

 1038 BUCKEYE ROAD

 MINDEN, NEVADA 89423

FOR THE DEFENDANT: OFFICE OF THE PUBLIC DEFENDER

 BY: JOHN ARRASWCADA, ESQ.

 PUBLIC DEFENDER

 KATHERYN HICKMAN, ESQ.

 JOSEPH GOODNIGHT, ESQ.

 GIANNA VERNES, ESQ.

 DEPUTY PUBLIC DEFENDERS

 350 S. CENTER STREET

 RENO, NEVADA

1 RENO, NEVADA; MONDAY, MARCH 29, 2021; 11:00 A.M.

2 -oOo-

3
4 THE COURT: Thank you. Please be seated. Good
5 morning. Let the record of the Court reflect that today's
6 hearing is taking place on March 29, 2021. It is being held at
7 approximately 11:00 a.m. It is being held remotely because of
8 the closure of the courthouse at 75 Court Street, Reno, Washoe
9 County, Nevada, due to the national and local emergency caused
10 by COVID-19.

11 The Court and all participants are appearing through
12 simultaneous audiovisual transmission. I am physically located
13 in Reno, Washoe County, Nevada, which is the site of today's
14 court session. I'd ask the Court personnel who are attending
15 today to identify themselves at this time.

16 THE CLERK: Good morning. My name is Marci Stone,
17 court clerk, appearing from Washoe County.

18 COURT REPORTER: Judy Schonlau, court reporter,
19 Washoe County, Nevada.

20 THE COURT: We also have the assistance of a
21 previously sworn court interpreter. Would the interpreter
22 make their appearance for the record?

23 THE INTERPRETER: Good morning, Your Honor.
24 Jessica Escobar, certified court interpreter for the State of

1 Nevada. My certification number is NVEJ-100, and I am
2 appearing in Washoe County, Nevada. Your Honor, may I
3 interpret that in Spanish for Mr. Martinez Guzman quickly?

4 THE COURT: You may.

5 THE COURT: Let the record reflect this session of
6 the Court is open to the public for viewing and listening to
7 the proceedings through the video-audio link found at the
8 washoecourts.com website.

9 The record should reflect Mr. Guzman is present.
10 Hello, Mr. Guzman.

11 THE DEFENDANT: Good morning.

12 THE COURT: Can you see and hear me okay?

13 THE DEFENDANT: Yes, Your Honor.

14 THE INTERPRETER: Your Honor, he cut out. May I
15 tell him to hold the space bar down all the way until the end
16 of his statement, please?

17 THE COURT: You may.

18 THE INTERPRETER: Thank you.

19 THE DEFENDANT: Yes. I am sorry. Yes, I can see
20 you and hear you, Your Honor.

21 THE COURT: Thank you. The record should also
22 reflect that Mr. Guzman is located at 911 Parr Boulevard,
23 Reno, Washoe County, Nevada.

24 If anyone during the course of this hearing cannot

1 see and hear the other participants in the hearing, they must
2 notify the Court immediately.

3 I ask that all participants state their physical
4 location as well as their name when they make their first
5 appearance. Counsel, I also ask you acknowledge you received
6 notice that this hearing is taking place pursuant to Nevada
7 Supreme Court Rule Part IX relating to simultaneous
8 audiovisual transmission in criminal proceedings and the
9 Second Judicial District Court Administrative Orders entered
10 in 2020 and '21.

11 We'll move forward with case number CR19-0447, State
12 versus Wilber Martinez Guzman. Mr. Guzman has already been
13 identified. We'll ask the State to make their appearances.

14 MR. JACKSON: Good morning, Your Honor, Mark Jackson
15 on behalf the State. I am appearing here in Washoe County. I
16 have received a copy of the Order and Notice for this hearing,
17 and I have no objection to proceeding in this manner.

18 THE COURT: Thank you.

19 MR. HICKS: Good morning, Your Honor, Chris Hicks on
20 behalf of the State. I am also in Washoe County, Nevada, and
21 acknowledge the Order you mentioned and have no objection to
22 proceeding in this manner.

23 THE COURT: Thank you.

24 MR. LUCIA: Good morning, Your Honor, Travis Lucia

1 appearing on behalf of the State. I have received the same
2 Notice regarding this hearing and have no objection to
3 proceeding in this fashion. I, too, am in Washoe County,
4 Nevada.

5 THE COURT: Thank you.

6 THE COURT: Counsel for the defendant.

7 MR. ARRASCADA: Yes, thank you, Your Honor.

8 John Arrascada on behalf of Mr. Martinez Guzman. I am
9 appearing from Reno, Nevada. I am aware and have read all of
10 the relevant Orders and documents related to audio-visual
11 hearings and have no objection to it for purposes of this
12 hearing.

13 THE COURT: Thank you.

14 MS. HICKMAN: Good morning, Your Honor, Kate Hickman
15 on behalf of Mr. Martinez Guzman. I am familiar with all the
16 orders, and I have no objection to proceeding in this way this
17 morning, and I am in Washoe County.

18 THE COURT: Thank you.

19 MR. GOODNIGHT: Good morning, Your Honor.

20 Joe Goodnight on behalf of Mr. Martinez Guzman. I am in Washoe
21 County as well. I received the relevant Notice and Order and
22 have no objection to proceeding in this manner.

23 THE COURT: Thank you.

24 MS. VERNES: Gianna Verness on behalf of

1 Mr. Martinez Guzman. I am appearing from Washoe County,
2 Nevada. I have received and reviewed the relevant Order and
3 Notice and have no objection to proceeding in this manner.

4 THE COURT: Thank you. This is the time set for a
5 status hearing in our ongoing case. We do have two
6 outstanding submits, one being S-8, the Motion for Reciprocal
7 Discover Motion regarding discovery, and D-29, the Motion for
8 Stay.

9 I have previously heard argument on the Motion for
10 Discovery. At the conclusion of the argument, when I took the
11 matter under submission, I asked counsel to discuss the case
12 and their different positions with regard to the discovery to
13 determine if they could reach an agreement. Has there been any
14 discussion, and have you reached an agreement? Mr. Arrascada.

15 MR. ARRASCADA: Your Honor we did hold a discussion
16 on Friday between myself, Ms. Hickman, Mr. Lucia, Mr. Jackson
17 and Mr. Hicks. We discussed the matter, but we were not able
18 to reach any compromise other than we will provide the
19 discovery in accordance with *Binegar v. State* and *Sechrest*
20 when we know that it will be used at trial, so no agreements
21 were entered or reached. Thank you.

22 THE COURT: Did you have anything you wanted to add,
23 Mr. Jackson?

24 MR. JACKSON: Thank you, Your Honor. I just wanted

1 to add the State has not received any additional discovery. I
2 just wanted to make sure the record was clear on that. And,
3 Mr. Arrascada's representations as to the position he took
4 during our discussion on Friday are accurate.

5 THE COURT: Okay. Thank you. The other matter which
6 is D-29, the Motion for Stay, does anyone want to be heard
7 with regard to the Motion to Stay which was submitted?

8 MR. ARRASCADA: Your Honor, we'll submit it on the
9 pleadings.

10 THE COURT: Okay. Thank you.

11 MR. LUCIA: Travis Lucia on behalf of the State. I
12 am happy to submit it on the pleadings as well if the Court
13 feels it is adequately informed with respect to the briefs and
14 the argument contained therein. As a result of some additional
15 research, I do have some additional case law or legal
16 authority in addition to some legislative history as well
17 which supports the State's argument which I am happy to place
18 on the record if the Court would like it.

19 THE COURT: I am comfortable ruling on the legal
20 authority that has been submitted to me so far from both
21 sides.

22 MR. LUCIA: Thank you, Judge. Unless the Court has
23 questions for me specifically, I'd be happy to submit it as
24 well.

1 THE COURT: All right. Thank you. With regard to
2 the Motion to Stay, the Court has reviewed that Motion and
3 also the case law that was submitted in support of the Motion
4 and in opposition. I do find that the four criteria that the
5 Court should look at are: Whether the object of the Writ
6 would be defeated if the stay is denied; whether the
7 Petitioner will suffer irreparable or serious harm or injury
8 if the stay is denied; and whether the respondent or real
9 party in interest will suffer irreparable or serious injury if
10 the stay is granted; and whether the Petitioner is likely to
11 prevail on the merits of the Petition.

12 I agree that none of those factors are more
13 compelling than the other factor and are to be taken in
14 totality.

15 First, the Court is not of the opinion that the
16 Petitioner will in fact prevail. If I thought he would
17 prevail, I would have issued a different order to start with.
18 So it is my belief that the Supreme Court will not say
19 District Courts have no authority to manage their docket with
20 pretrial orders. And so that is in effect what I think you
21 are asking the Supreme Court to determine. So I do not think
22 you will prevail.

23 Further, whether or not the real party in interest
24 will suffer irreparable or serious injury. That is a very

1 difficult call. This case has been continued numerous times,
2 and it does involve witnesses and family members that are --
3 we do have some elderly witnesses. The determination of how
4 much harm is afforded to the State when a case is delayed year
5 after year is very difficult for the Court to quantify until
6 after that injury occurs. However, the Court is aware that
7 statutorily and legally there is precedent to consider undue
8 delays as detrimental to the Court and detrimental to the
9 determination of issues on the merits. That is why we have
10 latches. So without knowing how much injury, it is hard for
11 the Court to actually make a finding with regard to that.

12 Whether or not the Petitioner will suffer
13 irreparable or serious injury, the Court is not persuaded by
14 the argument placed in the request by the Petitioner. The
15 Order is clear that, if you have that motion to make, you make
16 it at the date that I gave you. If you did not have it, and
17 you have compelling reasons not to make it, you ask the Court.
18 As the State argued, you don't have to make it. You can make
19 a request later to the Court and show why you were unable to
20 do it on the deadline that was required and show good cause
21 why you are filing it late. That is part of the pre-trial
22 orders in this case. I can't find where you suffer
23 irreparable serious injury if the stay is denied.

24 The State made an argument that it would not defeat

1 the purpose of the Petition if the stay is not granted. That
2 is hard for the Court to determine, because I understand that
3 there is oral argument set in this case very soon before the
4 deadline that has been set, and so a permanent stay would in
5 fact cause a delay of the trial. There is no question about
6 it. If we wait for, four or five months for the Nevada Supreme
7 Court to make a ruling, there is no question this trial will
8 have to be continued. But perhaps not if I don't grant the
9 stay. If the Supreme Court thinks they want to take this issue
10 up and want to rule on it, the Supreme Court could in fact
11 grant a stay. So continuing with that, I find that the
12 Petitioner will not suffer irreparable or serious injury if
13 the stay is denied and the Respondent will suffer perhaps some
14 injury if it is granted. And I think that Petitioner is
15 unlikely to prevail on the merits.

16 So for all those reasons and what I have just stated
17 I am denying the Motion for Stay.

18 I ask the State prepare a written decision according
19 with my findings to make the record.

20 With regard to the Motion to Compel Discovery, the
21 Motion to Compel Discovery is opposed by the defense on the
22 argument that the State's request is premature and it is a
23 "Premature accelerated discovery regarding school records,
24 medical records, recorded communications and witness

1 statements and notes, and results of physical or mental
2 examinations, scientific tests or scientific experiments." And
3 states that is not permitted under the established case law,
4 statutes, due process and the Nevada and United States
5 Constitutions. That begs the question as to who decides it's
6 premature. At what point is it premature? My Order is very
7 clear. It says you must give reciprocal discovery pursuant to
8 the statute when you know what you are going to use. That is
9 not in violation of the Constitution or due process. The
10 gatekeeper for making the determination of when this evidence
11 is going to be used in the case-in-chief is with the defense,
12 not with the Court, not with the State. Now if the defense has
13 already made that decision and precludes providing that
14 discovery, then you are in violation of my Order. If you have
15 not made that decision, then you are not in violation of the
16 reciprocal discovery Order. So this is up to the defense to
17 keep their record and make this record. If at some point it
18 is determined that you have violated the Court's Order because
19 you did make a decision sooner than you disclosed the
20 evidence, then we'll have to deal with it as it happens. So
21 the Order stays in effect. Reciprocal discovery is ordered.
22 And, at the time the defense makes that determination, I would
23 hope it is a reasonable time and that it comports with the
24 statutory provisions and the Constitution. But I have no

1 control over when that determination is made nor does the
2 State. So the request is granted as it is stated in the Order
3 for Reciprocal Discovery, and I will file a written decision
4 in that regard.

5 Is there anything pending other than what we
6 discussed today that we need to talk about? Mr. Jackson.

7 MR. JACKSON: Nothing further from the State, Your
8 Honor.

9 THE COURT: Okay. Mr. Arrascada?

10 MR. ARRASCADA: No, Your Honor.

11 THE COURT: Okay. Then we'll set our thirty-day
12 review that we are having. We might have a decision from the
13 Supreme Court by then, or we might not. I don't know.

14 Ms. Stone.

15 THE CLERK: Thank you, Your Honor. Would you like to
16 hold it on a Monday similar to this? Thirty days is
17 approximately the week of April 26th.

18 THE COURT: So the week of April 26th, I don't think
19 we have any other cases set for that Monday, do we, Ms. Clerk?

20 THE CLERK: Excuse me. I am sorry. At this time, I
21 do not believe so.

22 THE COURT: Okay. Let's set it for Monday morning.
23 Counsel, is 11:00 o'clock good, or shall we set it for 10:00?

24 MR. ARRASCADA: Judge, I think 11:00 o'clock is just

1 fine. Several of our attorneys on this team will be in trial,
2 but I will be present with Ms. Verness.

3 THE COURT: I was going to suggest we could do it
4 earlier or later. Is this the Department 1 case?

5 MR. ARRASCADA: You would have to ask Ms. Hickman.

6 MS. HICKMAN: Is this in Department 1? Yes.

7 THE COURT: Would you like us to set it later in the
8 afternoon? I do believe she's going to be using a six-hour
9 trial day starting at 8:00 a.m., so we could set this hearing
10 at 4:00 if that would be helpful.

11 MR. ARRASCADA: Your Honor, this is Mr. Arrasada. I
12 appreciate Ms. Hickman wanting to be at the hearing, although
13 I'd rather she be focusing on the case that is in trial. For
14 purpose of the next status conference, I would ask we waive
15 Ms. Hickman's appearance. I am the Rule 250 attorney.
16 Ms. Verness will be there. It appears Mr. Goodnight will be
17 present.

18 THE COURT: That's fine, as long as we have
19 somebody, and you're right, you are the Rule 250 attorney.
20 Then do you want to leave it at 11:00?

21 MR. ARRASCADA: May I confer with Mr. Goodnight and
22 Ms. Verness if that works? My schedule, it works, yes 11:00,
23 and Mr. Goodnight gave a thumbs up and Ms. Verness is nodding
24 her head.

1 THE COURT: Okay. Mr. Jackson, does that work for
2 the State?

3 MR. JACKSON: Yes, 11:00 works for the State, Yur
4 Honor. Thank you.

5 THE COURT: Okay. Then, Ms. Clerk, that is which
6 day?

7 THE CLERK: Thank you.

8 THE COURT: What day is it again?

9 THE CLERK: Oh, I am sorry. April 26th at 11:00
10 a.m.

11 THE COURT: All right. Then if there is nothing
12 further for today, do you need to speak with your client
13 again, Mr. Arrascada?

14 MR. ARRASCADA: No, Your Honor. Thank you.

15 THE COURT: Okay. You're welcome. If there is
16 nothing further this morning, we'll be in recess. Thank you.
17 Court's in recess.

18 (Whereupon, the proceedings were concluded.)

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1 STATE OF NEVADA,)
2) ss.
3 COUNTY OF WASHOE.)

4 I, Judith Ann Schonlau, Official Reporter of the
5 Second Judicial District Court of the State of Nevada, in and
6 for the County of Washoe, DO HEREBY CERTIFY:

7 That as such reporter I was present in Department
8 No. 4 of the above-entitled court on MONDAY, MARCH 29, 2021,
9 at the hour of 11:00 a.m. of said day and that I then and
10 there took verbatim stenotype notes of the proceedings had in
11 the matter of THE STATE OF NEVADA vs. WILBER MARTINEZ GUZMAN,
12 Case Number CR19-0447.

13 That the foregoing transcript, consisting of pages
14 numbered 1-16 inclusive, is a full, true and correct
15 transcription of my said stenotypy notes, so taken as
16 aforesaid, and is a full, true and correct statement of the
17 proceedings had and testimony given upon the trial of the
18 above-entitled action to the best of my knowledge, skill and
19 ability.

20 DATED: At Reno, Nevada this 29th day of March, 2021.

21
22 /s/ Judith Ann Schonlau
23 JUDITH ANN SCHONLAU CSR #18
24

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 29th day of March 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows: Jennifer P. Noble, Chief Appellate Deputy and Marilee Cate, Appellate Deputy, Washoe County District Attorney's Office.

I certify that I served a copy of this document by e-mailing a true and correct copy thereof to:

Christopher J. Hicks
Washoe County District Attorney
Mark Jackson
Douglas County District Attorney

John Reese Petty
John Reese Petty
Washoe County Public Defender's Office