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ARIZONA SUPREME COURT

STATE OF ARIZONA,)	
Appellee,)	CR-13-0282-AP
)	
v.)	Maricopa County Superior Court
)	No. CR 2003-038541-001
AARON BRIAN GUNCHES,)	
Appellant.)	

MOTION TO APPEAR AS *AMICUS CURIAE*

Pursuant to Rule 31.15(b)(2)(A) of the Arizona Rules of Criminal Procedure, the Federal Public Defender’s Office for the District of Arizona (“FPD”) respectfully requests that it be permitted to participate as *amicus curiae* in this matter and file the accompanying brief. This motion is based on the following memorandum of points and authorities.

MEMORANDUM

The Court has ordered that the Appellee State of Arizona, Appellant Aaron Brian Gunches, and the Crime Victim, Ms. Karen Price, file simultaneous supplemental briefs by February 16, 2023, addressing this question:

Because the State's original motion for warrant of execution placed this Court on notice that the requirements of A.R.S. § 13-759(A) and Ariz. R. Crim. P. 31.23(a) have been satisfied, and because the State's motion to withdraw does not assert otherwise, does this Court have authority to do anything other than issue the Warrant of Execution?

Order, *State v. Gunches*, No. CR-13-0282 (Ariz. Feb. 2, 2023); Order, *Gunches*, No. CR-13-0282 (Ariz. Jan. 31, 2023). The Court subsequently granted the Maricopa County Attorney's Office's motion to appear as *amicus curiae* and directed that its brief be filed simultaneously with the supplemental briefs of the Appellee, Mr. Gunches, and the Crime Victim. Order, *Gunches*, No. CR-13-0282 (Ariz. Feb. 8, 2023). None of these briefs is to exceed 15 pages.

The FPD respectfully requests that the Court similarly grant it leave to file an *amicus* brief on February 16, 2023. *See* Ariz. R. Crim. P. 31.15(b)(1)(C). The FPD has read the relevant briefs and orders and has lodged its 15-page *amicus* brief concurrently with this motion. *See* Ariz. R. Crim. P. 31.15(b)(2)(A).

The Capital Habeas Unit of the FPD is regularly appointed to represent indigent Arizona death-row prisoners in federal habeas proceedings and collateral end-stage litigation, including litigation in this Court related to the issuance of execution warrants.

The FPD’s mission is to protect the constitutional rights of its condemned clients. That includes ensuring that death sentences are carried out in compliance with the United States and Arizona Constitutions.

As counsel for most of the Arizona prisoners presently subject to sentences of death, the FPD has a strong interest in the outcome of the question presented in this Court’s January 31, 2023 Order: whether the Court retains the authority to do anything other than issue a warrant of execution after it has notice that the requirements in A.R.S. § 13-759(A) and Ariz. R. Crim P. 31.23(a) have been satisfied. *See* Ariz. R. Crim. P. 31.15(b)(2)(B)(ii) (permitting brief from *amicus curiae* with “an interest in another case that the decision in the present case may affect”). Further, as counsel for two of the three men most recently executed in Arizona and for several others who have litigated the issuance of an execution warrant before the Court—and as a litigation adversary to the State of Arizona—the FPD is also uniquely positioned to offer guidance to the Court on this issue. The heightened standard of reliability required in a capital case, *see, e.g., Woodson v. North Carolina*, 428 U.S. 280, 305 (1976), and Mr. Gunches’s *pro se* status also weigh in favor of permitting counsel with significant prior warrant litigation experience on behalf of condemned Arizona prisoners to offer its perspective to the Court. *See* Ariz. R. Crim. P. 31.15(b)(2)(B)(iii) (permitting brief from *amicus curiae* that “can provide information, perspective, or argument that can help the appellate court beyond the help that the parties’ lawyers provide”).

Accordingly, the FPD requests that the Court grant it leave to appear as *amicus curiae* and to file its concurrently lodged brief.

Respectfully submitted this 16th day of February, 2023.

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District of Arizona

s/Charlotte G. Merrill
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