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**IN THE SUPREME COURT OF
THE STATE OF ARIZONA**

STATE OF ARIZONA,

Appellee,

vs.

AARON BRIAN GUNCHES,

Appellant.

No. CR-13-0282-AP

Maricopa County Superior Court
No. CR 2003-038541-001

**MOTION TO EXTEND WARRANT
OF EXECUTION**

Victim Karen Price and Maricopa County Attorney Rachel H. Mitchell, on behalf of Victim Brittney Kay, move this Court to extend the warrant by 25 additional days pursuant to Arizona Rule of Criminal Procedure 31.23(c) and A.R.S. § 13-4437(A) and (C). Rule 31.23(c) provides that if this Court “finds that it is impracticable to carry out an execution” on the date specified in the warrant, this Court, “may extend the execution date but may not extend it more than 60 days after

the warrant’s issuance.” *Id.* Both the Governor’s and Arizona Department of Corrections, Rehabilitation, and Reform’s (ADCRR) statements and actions, have demonstrated it is impracticable to carry out the execution on April 6, 2023. The Victims have filed a complaint in Superior Court to enforce their constitutional and statutory rights, and extending the warrant gives the Victims an opportunity to litigate their claims. This Court issued the warrant on March 2, 2023; the Victims request this Court extend the date of execution to May 1, 2023.

Both Governor and ADCRR have publicly stated that Arizona will not execute Aaron Gunches on April 6, 2023, and have indefinitely paused executions in Arizona. As a result, carrying out the execution on April 6, 2023, is impracticable because both the Governor and ADCRR will not have complied with the strict timelines imposed by ADCRR’s Department Order 710.¹ *See First. Amend. Coal. of Ariz., Inc. v. Ryan*, No. 2:14-cv-01447-NVW-JFM (D. Ariz.) (prohibiting ADCRR from deviating “from timeframes set forth in the execution procedures beyond those relating to minor or routine contingencies not central to the execution process” and “permanently enjoin[ing] [ADCRR] . . . from engaging in any conduct that violates” the stipulated settlement). If the execution proceeded on April 6, the Governor’s and

¹ Department Order 710 requires that ADCRR perform certain tasks 35 days, 21 days, 14 days, two days, 24 hours, and 12 hours before an execution. ADCRR, *Department Order 710: – Execution Procedures* (April 20, 2022), available at <https://corrections.az.gov/sites/default/files/documents/policies/700/0710.pdf>.

ADCRR's refusal to comply with Department Order 710 would result in a violation of a court ordered settlement.

Earlier today, March 31, 2023, the Victims filed a special action complaint in the Maricopa County Superior Court, CV2023-004976, alleging that the Governor and ADCRR's refusal to enforce this Court's warrant violates: (1) the Victims' constitutional right to due process, justice, and a prompt and final conclusion; (2) the statutory requirement to carry out lawfully imposed sentences, including a death sentence; and (3) separation of powers by granting a *de facto* reprieve. The Victims have asked for a declaratory judgment and preliminary injunction, along with a show cause order. Extending the warrant will give the Victims an opportunity to litigate their claims before the warrant expires, and it would give ADCRR an opportunity to comply with Department Order 710 if the Victims are successful.

Because carrying out the execution on April 6 is impracticable, the Victims request that this Court extend the warrant, setting Gunches's execution for May 1, 2023, as authorized by Rule 31.23(c).

Respectfully submitted this 31st day of March, 2023.

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MARICOPA COUNTY ATTORNEY

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Nicholas Klingerman
Deputy County Attorney

BY: /s/
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