

Jon M. Sands  
Federal Public Defender  
District of Arizona  
Charlotte G. Merrill  
Arizona Bar No. 029786  
Assistant Federal Public Defender  
850 West Adams Street, Suite 201  
Phoenix, AZ 85007  
(602) 382-2860  
Charlotte\_Merrill@fd.org

**ARIZONA SUPREME COURT**

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

---

**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 continue participating as *amicus curiae* and file the accompanying brief. This motion is based on the following memorandum of points and authorities.

## MEMORANDUM

The Court has ordered that the Motion to Extend Warrant of Execution filed by Crime Victim Karen Price and the Maricopa County Attorney on behalf of Crime Victim Brittney Kay will be considered following expedited briefing. Order, *State v. Gunches*, No. CR-13-0282 (Ariz. April 3, 2023). Pursuant to this Order, the Court invited amicus curiae to file briefs not exceeding 20 pages by April 4, 2023 at noon. *Id.*

The FPD respectfully requests that the Court grant it leave to file an *amicus* brief on April 4, 2023. *See* Ariz. R. Crim. P. 31.15(b)(1)(C). The FPD has read the relevant briefs and orders and has lodged its 14-page *amicus* brief concurrently with this motion. *See* Ariz. R. Crim. P. 31.15(b)(2)(A); *see* Attachment 1. It has already filed one amicus brief in this matter with the Court's permission.

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 issuing 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 subject to death sentences, and as a party to the federal litigation resulting in Arizona's current execution protocol, the FPD has a strong interest in the outcome of the March 31, 2023 Motion to Extend Warrant of Execution. *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 execution warrants before the Court—and as a litigation adversary to the State—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 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”).

The FPD requests that the Court grant it leave to continue to appear as *amicus curiae* and to file its concurrently lodged brief. *See* Attachment 1.

Respectfully submitted this 4th day of April, 2023.

Jon M. Sands  
Federal Public Defender  
District of Arizona

s/Charlotte G. Merrill  
Charlotte G. Merrill  
Arizona Bar No. 029786  
Assistant Federal Public Defender  
850 West Adams Street, Suite 201  
Phoenix, AZ 85007  
(602) 382-2860  
Charlotte\_Merrill@fd.org