

SUPREME COURT OF ARIZONA

STATE OF ARIZONA,

Appellee,

v.

AARON BRIAN GUNCHES,

Appellant.

Arizona Supreme Court
No. CR-13-0282-AP

Maricopa County
Superior Court
No. CR2003-038541-001

**MOTION OF CORINNA BARRETT LAIN
FOR
LEAVE TO FILE BRIEF AS AMICA CURIAE**

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Dated: January 23, 2025

Pursuant to Rule 31.15(b)(2)(A) of the Arizona Rules of Criminal Procedure, Amica Curiae Corinna Barrett Lain respectfully moves this Court for leave to file the accompanying lodged amica curiae brief in support of neither party.

On January 8, 2025, this Court denied without prejudice Amica's *Motion for Leave to File as Amicus Curiae* on the State's *Motion to Set Briefing Schedule for Motion for Warrant of Execution*, welcoming a brief "that provides information, perspective, or argument on the narrow issues before the Court on a motion for warrant of execution pursuant to Ariz. R. Crim. P. 31.23(a)." Amended Order at 3-4, *State v. Gunches*, No. CR-13-0282-AP, 2025 WL 53409, at *2 (Ariz. Jan. 8, 2025).

Professor Lain is grateful for the opportunity to address these issues and respectfully requests that this Court grant her leave to file an amica brief to aid the Court in its consideration of whether an execution warrant should issue. Professor Lain has read the pleadings of both parties filed in this Court, and her interest in this litigation is detailed below.

Professor Lain is the S.D. Roberts and Sandra Moore Professor of Law at the University of Richmond School of Law, where she has been a

law professor for 23 years. Professor Lain is a constitutional historian, former prosecutor, and one of the nation's leading authorities on the death penalty. Her work has appeared in the nation's most prestigious law reviews, and has been cited by the United States Supreme Court. *See Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464, 503 n.11 (2020) (Alito, J., concurring).

Professor Lain has written the forthcoming authoritative book on lethal injection, *Secrets of the Killing State*, due to be published in April 2025. *Secrets of the Killing State* is the culmination of seven years of deep research on all aspects of lethal injection, across all executing states in the country. Professor Lain's research draws on litigation files, scientific studies, investigative journalism, and scholarship to provide a comprehensive analysis of 45 years of lethal injection executions in the United States. Arizona has been a primary interest, as the state has a long history of execution failures.

On January 8, 2025, this Court set a briefing schedule for the State's *Motion for Warrant of Execution*. *See* Amended Order at 2, *Gunches*, 2025 WL 53409, at *1. As directed, amica offers her expertise to provide information, perspective, and argument in the service of

answering “the narrow issues before the Court on a motion for warrant of execution pursuant to Ariz. R. Crim. P. 31.23(a).” *See* Amended Order at 3-4, *Gunches*, 2025 WL 53409, at *2. The threshold issue before this Court is whether it has authority to refrain from issuing a death warrant when the bare statutory requirements of A. Rev. Stat. section 13-759(A) and Ariz. R. Crim. P. 31.23(a) have been met. In her brief, amica explains why this Court does have such authority where, as here, an execution cannot be lawfully carried out. *See* Ariz. R. Crim. P. 31.15(b)(2)(B)(iii) (permitting brief where amicus curiae “can provide information perspective, or argument that can help the appellate court beyond the help that the parties’ lawyers provide”). Further, Appellant Aaron Gunches is self-represented with advisory counsel. *See* Ariz. R. Crim. P. 31.15(b)(2)(B)(i) (permitting brief where “a party. . . is self-represented”).

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CONCLUSION

In accordance with this Court's January 8, 2025 amended order, Corinna Barrett Lain requests that the Court grant her leave to appear as amica curiae and to file her concurrently lodged brief.

Dated: January 23, 2025

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