

Emily Skinner  
State Bar No. 025761  
[emily@azcapitalproject.org](mailto:emily@azcapitalproject.org)  
Amy Armstrong  
State Bar No. 022795  
[amy@azcapitalproject.org](mailto:amy@azcapitalproject.org)  
Arizona Capital Representation Project  
1201 E. Jefferson St, Suite 5  
Phoenix, AZ 85034  
(602) 388-4023

Advisory Counsel to Mr. Gunches

**IN THE ARIZONA SUPREME COURT**

STATE OF ARIZONA,	)	No. CR-13-0282-AP
	)	
Appellee,	)	Maricopa County Superior Court
	)	No. CR2003-038541
v.	)	
	)	
AARON BRIAN GUNCHES,	)	(Capital Case)
	)	
Appellant.	)	<b>MOTION TO ORDER ADCRR TO</b>
	)	<b>ALLOW MR. GUNCHES'</b>
	)	<b>WITNESSES TO WITNESS THE</b>
	)	<b>EXECUTION</b>
	)	

---

Mr. Gunches,<sup>1</sup> through undersigned advisory counsel, moves this Court to order the Arizona Department of Corrections, Rehabilitation and Reentry (ADCRR) to allow two witnesses, designated by Mr. Gunches, to witness Mr. Gunches' execution. This request is

---

<sup>1</sup> Mr. Gunches requested that advisory counsel file this motion on his behalf due to the time sensitive nature and logistical issues with filing in this Court.

made pursuant to Mr. Gunches' rights to due process and to be free from cruel and unusual punishment. U.S. Const. Amends. VIII, XIV; Ariz. Const. Art. II, §§4, 11, 15, 24.

## **I. Relevant Facts**

Department Order (“DO”) 710, which details Arizona’s execution protocol, provides for the various obligations of the ADCRR administration in carrying out an execution. At the time the warrant is issued, DO 710 requires the Warden “[d]irect the inmate to submit the Inmate Witness Information, Form 710-2, to the Warden no later than 14 days prior to the scheduled execution date.” DO 710, sec. 2.1.3.1, available at <https://corrections.az.gov/sites/default/files/documents/policies/700/0710%20-%20eff%2010-23-24.pdf> (accessed 3/11/25). Form 710-2 allows the condemned prisoner to identify five witnesses and two clergy to attend the execution.

When the warrant was issued on February 11, 2025, the Warden did not direct Mr. Gunches to submit Form 710-2, as required under DO 710. On February 18, 2025, undersigned counsel Emily Skinner emailed ADCRR general counsel to request a copy of Form 710-2 and the other forms Mr. Gunches was required to submit pursuant to the DO. Exhibit A, email from Emily Skinner to ADCRR (2/18/25). The next day, ADCRR general counsel informed undersigned that the forms were still being finalized. Exhibit B, email from ADCRR to advisory counsel (2/19/25).

The forms were provided to Mr. Gunches on February 20, 2025, nine days after the date the warrant issued. The same day, without the benefit of consulting counsel, Mr.

Gunches turned in Form 710-2, indicating he was not designating any witnesses<sup>2</sup> to attend the execution.

Under DO 710, sec. 2.1.3.1, Form 710-2 was due on March 5, 2025. After meeting with advisory counsel to discuss the forms, including the witness designation form, Mr. Gunches decided to revise his Form 710-2. On March 5, 2025, the day Form 710-2 was due, undersigned counsel emailed ADCRR's General Counsel to inform her that Mr. Gunches had a visit scheduled with counsel the following day and that one additional day was needed to finalize Form 710-2. Exhibit D, email from Emily Skinner to ADCRR (3/5/25). General Counsel did not respond.

On March 6, 2025, advisory counsel Amy Armstrong met with Mr. Gunches to assist him with filling out the witness form. Mr. Gunches listed two individuals on his witness form. During the visit, Mr. Gunches turned in the revised Form 710-2 to an ADCRR staff member, who indicated she was expecting that form as the administration had been inquiring about it during Attorney Armstrong's legal visit.

On March 10, 2025—four days after Mr. Gunches submitted his revised Form 710-2—ADCRR general counsel emailed undersigned advisory counsel to inform them that Mr. Gunches' two witnesses would not be permitted to attend the execution because Form 710-2 was untimely and because “[t]he witness room is very small and we must ensure that we comply with A.R.S. §13-758 and include all required statutory witnesses...” Exhibit E, email from ADCRR to advisory counsel (3/10/25). Undersigned counsel responded within

---

<sup>2</sup> A member of the legal team will witness the execution and is not required to be listed on Form 710-2.

minutes, reminding general counsel that, while Mr. Gunches did submit his revised Form 710-2 one day late, counsel had given ADCRR notice that he would submit the form late and that a one-day extension was not unreasonable, given that Mr. Gunches was provided the forms nine days late. Exhibit F, email from Emily Skinner to ADCRR (3/10/25).

In addition, general counsel did not respond to undersigned counsel's email stating that the form would be submitted on March 6, after Mr. Gunches met with Amy Armstrong. Had general counsel responded stating that the arrangement was not acceptable, advisory counsel would have arranged for a legal call with Mr. Gunches and have him submit the form to a corrections officer at the prison.

Finally, advisory counsel also explained that, pursuant to DO 710, Mr. Gunches is entitled to three legal witnesses, two clergy, and five other witnesses at his execution. *Id.* He has only requested one legal witness and two other witnesses observe the execution. *Id.* Thus, Mr. Gunches has only requested three of the 10 witnesses to which he is entitled under ADCRR's own policies. General Counsel responded, reaffirming ADCRR's position that Mr. Gunches' witnesses would not be allowed to witness the execution. Exhibit G, email from ADCRR (3/11/25).

## **II. Argument**

Although Mr. Gunches has asked to be executed, waived all collateral attacks on his conviction and sentence, and not challenged the State's lethal injection protocol, he does seek to access the few accommodations provided for in the execution protocol, including the ability of his chosen witnesses—a mere two individuals—to witness his execution.

The State of Arizona has, consistent with its history in these matters, once again violated its own protocols by providing Mr. Gunches with the witness information form, Form 710-2, *nine* days late and then insisting there was no way to accommodate Mr. Gunches' two witnesses after he submitted the form—with notice—a single day late to enable him to consult with counsel. *See, e.g. Lopez v. Brewer*, 680 F.3d 1068, 1070 (9th Cir. 2012) (referencing Arizona's history of protocol violations, "We embark upon this opinion with *deja vu*, the feeling that we have been here before, but with the knowledge that we will likely be here again."); *Landrigan v. Brewer*, 625 F.3d 1132, 1133 (9th Cir. 2010) (Wardlaw & W. Fletcher, JJ., concurring in the denial of rehearing *en banc*) (Describing the State's failure to comply with court orders, "The State's gamesmanship is unseemly at best, and inhumane at worst."). ADCRR's proported rationale for denying Mr. Gunches his two witnesses—space and logistics—appears completely pretextual. Mr. Gunches is entitled to 10 witnesses in total at his execution and has only requested three. Further, if the logistics of accommodating witnesses to the execution is so onerous that ADCRR cannot allow a death row prisoner to submit his witness list even a single day late, then ADCRR must bear some responsibility for providing the form to Mr. Gunches nine days late and curtailing his ability to discuss his options with counsel and reflect on his last wishes. ADCRR must be held to the same standards and strictly comply with its own protocols if it wants to be unforgiving with the condemned.

Allowing witnesses to observe every part of the execution serves a critical function, particularly where, as here, the lethal injection will proceed unchallenged despite indications from amici that there are significant concerns with the quality and effectiveness of the

pentobarbital. The Ninth Circuit has stressed the importance of “independent public scrutiny” in ensuring “the proper functioning of capital punishment.” *California First Amendment Coalition v. Woodford*, 299 F.3d 868, 876 (9th Cir. 2002). Where the public is permitted to scrutinize a governmental process, it “enhances the quality and safeguards the integrity” of the process. *Id.* (quoting *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596, 606 (1982)). Moreover, the Ninth Circuit found that “an informed public debate is critical in determining whether execution by lethal injection comports with ‘the evolving standards of decency which mark the progress of a maturing society.’” *Id.* at 876 (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)) (emphasis added). “[T]he citizens must have reliable information” in order to determine whether “executions are fairly and humanely administered[.]” *Id.* (citing *Globe Newspaper*, 457 U.S. at 606).

Allowing a person sentenced to death to choose witnesses to attend and view his execution ensures transparency in the execution process and safeguards against potential violations of human rights. It can provide psychological and emotional support in their final moments. Additionally, the presence of chosen witnesses can help preserve human dignity and reinforce accountability in the execution process. Permitting selected witnesses contributes to the overall transparency of the death penalty process. Public oversight, in the form of impartial witnesses, can help ensure that the execution is carried out in a humane and lawful manner. This right can also serve as a check against potential misconduct or procedural errors during an execution.

Mr. Gunches does not seek anything extraordinary from this Court. He does not seek to delay his execution, nor does he challenge the method. He has not challenged his

conviction or his sentence. He simply requests ADCRR comply with his request that two non-legal witnesses of his choice be permitted to witness his execution. As the Supreme Court put it, because “execution is the most irremediable and unfathomable of penalties...death is different.” *Ford v. Wainwright*, 477 U.S. 399, 411 (1986). The State must not be permitted to carry out this most extreme punishment cloaked from the scrutiny of Mr. Gunches’ witnesses.

Mr. Gunches therefore requests this Court order the State and ADCRR to allow his two designated non-legal witnesses to attend his execution.

Respectfully submitted this 12<sup>th</sup> day of March, 2025 by:

s/ *Emily Skinner*  
Emily Skinner  
Amy Armstrong  
Advisory Counsel for Mr. Gunches

# Exhibit A



Emily Skinner <emily@azcapitalproject.org>

---

## Gunches - forms

---

Emily Skinner <emily@azcapitalproject.org>

Tue, Feb 18, 2025 at 10:14 AM

To: Laura Flores <lflores2@azadc.gov>, Amy Armstrong <amy@azcapitalproject.org>

Hi Laura,

Can you please provide us with copies of the forms referenced in DO 710 that ADCRR provided to Mr. Gunches once the warrant was issued (i.e.710-2, 710-3, 710-5, 711-1)? Thank you

--

Emily Skinner (she/her)  
Assistant Director/Staff Counsel

Arizona Capital Representation Project  
1201 E Jefferson St, Suite 5  
Phoenix, AZ 85034  
Office: (602)388-4023  
Cell: (520) 591-9812  
[emily@azcapitalproject.org](mailto:emily@azcapitalproject.org)  
[www.azcapitalproject.org](http://www.azcapitalproject.org)

CAUTION: This confidential email is intended only for the person or entity named above and may be legally privileged against disclosure. 18 U.S.C. 2510-2521. Unauthorized recipients are prohibited from possessing or distributing this email. Unauthorized recipients must delete all copies of this email and notify the sender immediately at [project@azcapitalproject.org](mailto:project@azcapitalproject.org)

# Exhibit B



Emily Skinner <emily@azcapitalproject.org>

---

## Gunches - forms

---

**Laura Flores** <l flores2@azadc.gov>

Wed, Feb 19, 2025 at 5:04 PM

To: Emily Skinner <emily@azcapitalproject.org>, Amy Armstrong <amy@azcapitalproject.org>

Hi Emily and Amy,

I spoke with Amy today and told her I would get her the updated forms as soon as possible. I think all that has changed is the name of one of the forms, but I am waiting for final confirmation before I send them. What time is your visit with Mr. Gunches tomorrow? If I don't get the final sign-off before then, I think you should be fine using the forms you currently have since the change is so minor.

Thank you!

Laura

[Quoted text hidden]

[Quoted text hidden]

# Exhibit C

---

## 710 forms

---

Laura Flores <lflores2@azadc.gov>

Thu, Feb 20, 2025 at 8:26 AM

To: Emily Skinner <emily@azcapitalproject.org>, Amy Armstrong <amy@azcapitalproject.org>

Good morning,

Attached please find the most up-to-date 710 forms. These forms will also be provided to Mr. Gunches this morning.



**Laura Flores**  
**General Counsel**

Central Office: [701 E. Jefferson St.,](#)  
[Phoenix, AZ, 85034](#)

Phone: 602-542-0574

Email: [lflores2@azadc.gov](mailto:lflores2@azadc.gov)


Website: [corrections.az.gov](http://corrections.az.gov)


This message contains information that may be confidential and privileged. If you are not the intended recipient, you are hereby notified not to read the message and that any dissemination, distribution, or copying of this message or any attachment(s), is strictly prohibited. Receipt by anyone other than the intended recipient is not a waiver of any attorney-client or work-product privilege. If you have received this message in error, please advise the sender by replying to this email and then deleting the message and any attachment(s). Thank you.


This email contains information that is intended only for the person(s) to whom it is addressed. If you received this communication in error, please do not retain it or distribute it and notify the sender immediately.


---

### 4 attachments

 **710-3.docx**  
107K

 **710-2.docx**  
91K

 **710-5.docx**  
90K

 **711-1.doc**  
4927K

# Exhibit D



Emily Skinner <emily@azcapitalproject.org>

---

## Gunches - witness list

---

Emily Skinner <emily@azcapitalproject.org>

Wed, Mar 5, 2025 at 4:22 PM

To: Laura Flores <lflores2@azadc.gov>, Amy Armstrong <amy@azcapitalproject.org>

Hi Laura,

I believe Mr. Gunches' witness list, form 710-2, is due today. We need one more day to finalize his list. Amy is visiting with Mr. Gunches tomorrow and will be able to finalize at that time. Thank you

--

Emily Skinner (she/her)  
Assistant Director/Staff Counsel

Arizona Capital Representation Project  
1201 E Jefferson St, Suite 5  
Phoenix, AZ 85034  
Office: (602)388-4023  
Cell: (520) 591-9812  
[emily@azcapitalproject.org](mailto:emily@azcapitalproject.org)  
[www.azcapitalproject.org](http://www.azcapitalproject.org)

CAUTION: This confidential email is intended only for the person or entity named above and may be legally privileged against disclosure. 18 U.S.C. 2510-2521. Unauthorized recipients are prohibited from possessing or distributing this email. Unauthorized recipients must delete all copies of this email and notify the sender immediately at [project@azcapitalproject.org](mailto:project@azcapitalproject.org)

# Exhibit E

---

## Gunches - witness list

---

**Laura Flores** <lflores2@azadc.gov>

Mon, Mar 10, 2025 at 1:15 PM

To: Emily Skinner <emily@azcapitalproject.org>

Cc: Amy Armstrong <amy@azcapitalproject.org>, "Lewis, Jason" <Jason.Lewis@azag.gov>, "Sparks, Jeffrey" <Jeffrey.Sparks@azag.gov>

Hi Emily,

We actually already received Mr. Gunches' signed witness list (form 710-2) on February 20, 2025 (please see attached) and are, unfortunately, unable to make an exception for the untimely second form (also attached) that we received on March 6, 2025. The witness room is very small and we must ensure that we comply with A.R.S. 13-758 and include all required statutory witnesses. The timing of when invitations go out and when forms come back ensures that we have room for everyone we are required to in the room. Late forms create issues that cannot always be overcome. As you know, we did already make a timeliness exception last week and had the Director extend one of his statutory invites to Dale Baich. We are unable to make an exception for these additional requests.

Thank you,  
Laura



**Laura Flores**  
**General Counsel**

Central Office: [701 E. Jefferson St., Phoenix, AZ, 85034](#)

Phone: 602-542-0574

Email: [lflores2@azadc.gov](mailto:lflores2@azadc.gov)

Website: [corrections.az.gov](http://corrections.az.gov)

This message contains information that may be confidential and privileged. If you are not the intended recipient, you are hereby notified not to read the message and that any dissemination, distribution, or copying of this message or any attachment(s), is strictly prohibited. Receipt by anyone other than the intended recipient is not a waiver of any attorney-client or work-product privilege. If you have received this message in error, please advise the sender by replying to this email and then deleting the message and any attachment(s). Thank you.

[Quoted text hidden]

This email contains information that is intended only for the person(s) to whom it is addressed. If you received this communication in error, please do not retain it or distribute it and notify the sender immediately.

---

### 2 attachments

 **Inmate Gunches Witness form.pdf**  
53K

 **145371 Gunches forms.pdf**  
236K

# Exhibit F



Emily Skinner <emily@azcapitalproject.org>

---

## Gunches - witness list

---

**Emily Skinner** <emily@azcapitalproject.org>

Mon, Mar 10, 2025 at 1:43 PM

To: Laura Flores <lflores2@azadc.gov>

Cc: Amy Armstrong <amy@azcapitalproject.org>, "Lewis, Jason" <Jason.Lewis@azag.gov>, "Sparks, Jeffrey" <Jeffrey.Sparks@azag.gov>

Laura,

DO 710, sec 2.1.3.1. states that, upon receipt of the warrant, the Director is to direct Mr. Gunches to submit form 710-2 "no later than 14 days prior to the scheduled execution date." ADCRR did not provide Mr. Gunches with form 710-2 until February 20--nine days after the warrant was issued. Mr. Gunches submitted a revised form 710-2 a single day late-- on March 6, rather than March 5. We advised you ahead of time that Mr. Gunches needed an additional day to meet with counsel to assist him with the form. The DO allows Mr. Gunches to select three members of his legal team, plus five witnesses and two clergy to witness the execution. He has selected a single defense team member--Dale Baich--plus two witnesses and no clergy to be in HU9 during the execution. I understand there is limited space, but Mr. Gunches has not exceeded the number of witnesses he is permitted under the DO. And, given the nine day delay in providing him with the forms, allowing him to submit a form a single day late to allow him to confer with counsel does not seem unreasonable.

[Quoted text hidden]

# Exhibit G

---

**Gunches - witness list**

---

**Laura Flores** <lflores2@azadc.gov>

Tue, Mar 11, 2025 at 9:21 AM

To: Emily Skinner &lt;emily@azcapitalproject.org&gt;

Cc: Amy Armstrong &lt;amy@azcapitalproject.org&gt;, "Lewis, Jason" &lt;Jason.Lewis@azag.gov&gt;, "Sparks, Jeffrey" &lt;Jeffrey.Sparks@azag.gov&gt;

Emily,

While we understand your concern, the request is denied.

Mr. Gunches was provided with DO 710 on February 11, 2025 and Form 710-2 was provided to him on February 20, 2025. You were also provided with those forms on February 20, 2025.

Mr. Gunches returned Form 710-2, wrote "NONE", and signed his name on February 20, 2025 (see attached). Prior to the March 5, 2025 deadline, there were multiple opportunities for Mr. Gunches to confer with counsel and ensure that an updated request for inmate witnesses could be submitted. To be sure, legal visits occurred on February 20, 2025, February 27, 2025, and March 4, 2025. There were no additional forms returned following any of those visits nor were any additional Form 710-2's provided within the timeframes clearly outlined in DO 710.

As I am sure you can understand, planning for this process requires the efforts of many and has multiple moving parts - including the necessity of various witness escorts, staging locations, timelines, etc. We have been accommodating, even making an exception for a legal team member. At this point, however, we will not be accommodating any late requests and will not be adding additional members to the witness room. Thank you for understanding.



**Laura Flores**  
**General Counsel**

Central Office: [701 E. Jefferson St.,](#)  
[Phoenix, AZ, 85034](#)

Phone: 602-542-0574

Email: [lflores2@azadc.gov](mailto:lflores2@azadc.gov)

Website: [corrections.az.gov](http://corrections.az.gov)

This message contains information that may be confidential and privileged. If you are not the intended recipient, you are hereby notified not to read the message and that any dissemination, distribution, or copying of this message or any attachment(s), is strictly prohibited. Receipt by anyone other than the intended recipient is not a waiver of any attorney-client or work-product privilege. If you have received this message in error, please advise the sender by replying to this email and then deleting the message and any attachment(s). Thank you.

[Quoted text hidden]

[Quoted text hidden]

---

 **145371 Gunches forms.pdf**  
236K