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Attorneys for Defendant **ARIAS**

**SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA**

THE STATE OF ARIZONA	)	No. CR 2008-031021-001DT
	)	
Plaintiff,	)	<b>MOTION TO CONTINUE;</b>
	)	<b>PENALTY PHASE</b>
vs.	)	
JODI ANN ARIAS,	)	(Hon. Sherry Stephens)
Defendant.	)	
	)	<b>(Oral Argument Requested)</b>

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Ms. Arias, through undersigned counsel, pursuant to the rights due her via the Fifth, Eighth and Fourteenth Amendments of the United States Constitution, as well as Art. II, § 4 and Art. III of the Arizona Constitution, hereby moves to continue the Penalty Phase proceedings currently scheduled for July 18, 2013 until January of 2014. The reasons for this request along with the law supporting this request can be found in the attached Memorandum of Points and Authorities which is incorporated herein by reference. Additionally, Ms. Arias is requesting that this court consider facts that Ms. Arias wishes to raise in an ex-parte hearing before deciding this motion.

## **Memorandum of Points and Authorities**

### **I. RELEVANT FACTS**

On May 24, 2013, a mistrial was declared as to the penalty phase due to the fact that the jury could not reach a unanimous decision as to whether or not Ms. Arias should be put to death or if she should be sentenced to spend the rest of her life in prison. On this same day this court scheduled the subsequent penalty phase on July 18, 2013.

Before the penalty phase began Ms. Arias moved to dismiss the death penalty due to the fact that she could not present a complete mitigation case. On May 20, 2013, during the argument on that motion, Ms. Arias advised the court that Patricia Womack was not willing to return to Arizona to testify on Ms. Arias' behalf because she had been threatened. Of note is the fact this comes on the heels of record being made of the threats made to Ms. LaViolette, an expert in the field of domestic violence and another key mitigation witness. Due to Ms. Arias inability to present a complete picture to the jury Ms. Arias then chose to present no witnesses. In contrast to this state of affairs, it is Ms. Arias' desire to call witnesses during the re-trial of her sentencing phase, if and only if a full picture can be painted.

In deciding this motion Ms. Arias also asks this court to consider the schedule of counsel. Mr. Nurmi will be out of the office between July 3, 2013 and July 12, 2013. He will be again out of the office from July 17, 2013 to July 20, 2013. Ms. Willmott, will be out of the office between July 8, 2013 to July 15, 2013 as well as July 26, 2013 to July 29, 2013. Additionally, Ms. Willmott has the following matters set for trial in the summer of 2013;

State v. Soto CR 2012-110872-001, trial date TBD

State v. Rodriguez CR 2013- 000479, set for trial on August 8, 2013

State v. Webb CR 2011- 158326 set for trial on August 14, 2013

State v. Clouser, CR 2012-128926-001, set for trial on August 20, 2013

State v. Bustillos, CR2012-141355-001, set for trial on August 21, 2013

## II. RELEVANT LAW

Given the State of affairs described above before presenting mitigating evidence Ms. Arias must now endeavor to paint a complete picture of Ms. Arias life in alternative ways and/or through other witnesses.

In considering this motion Ms. Arias reminds this court that painting such a picture is not a matter of aspiration but instead it is the duty of defense counsel to paint such a picture. *Wiggins*, 539 U.S. 510 92003) at 524, *citing* ABA GUIDELINES.

Furthermore, Ms. Arias asks this court to be cognizant of the fact the she has an absolute right to present mitigation evidence at trial and that in a capital case, every effort must be made to guarantee a defendant the right to present all relevant mitigation evidence to the jury that will decide whether he lives or dies. That is because the capital sentencer may not be precluded from considering, and may not refuse to consider, any relevant mitigating evidence, regardless of whether that evidence has a specific nexus to the crime committed. Instead, the sentencer in a capital case must consider in mitigation anything in the life of the defendant that might mitigate against a sentence of death. *Smith v. Texas*, 543 U.S. 37, 43-45 (2004); *Tennard v. Dretke*, 542 U.S. 274, 285-86 (2004); *see also* U.S. Const., Amends VIII & XIV; Ariz. Const., Art. 2, § 15. Mitigating circumstances are, “circumstances which do not justify or excuse the offense, but which,

in fairness or mercy, may be considered as extenuating or reducing the degree of moral culpability.” *Coker v. Georgia*, 433 U.S. 584, 590-91 (1977).

Of further note is that preclusion of mitigation evidence constitutes a violation of the Due Process Clause of the United States Constitution. *Green v. Georgia*, 442 U.S. 95, 97 (1979); U.S. Const., Amend. XIV; *see also* Ariz. Const., Art. 2, § 4.

In Ms. Arias’ case, the Defense mitigation investigation was completed and she was ready to present said evidence at trial up until the point in time when mitigation witnesses felt too intimidated to come forward. Thus, in essence Ms. Arias needs the requested time to find alternative means of painting the picture of Ms. Arias’ life that defense counsel must present and the jury must consider.

### **III. CONCLUSION**

For the reason mentioned above Ms. Arias requests that the penalty phase currently pending against her be continued until January of 2014, so that she can receive the full benefit of the rights due her pursuant to the Fifth, Eighth and Fourteenth Amendments of the United States Constitution, as well as Art. II, § 4 and Art. III of the Arizona Constitution,

RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of June, 2013.

By: /s/ L. Kirk Nurmi  
L. KIRK NURMI  
Counsel for Ms. Arias

Copy of the foregoing  
E-FILED this 12<sup>th</sup>  
day of June, 2013, to:

THE HONORABLE SHERRY STEPHENS  
Judge of the Superior Court

JUAN MARTINEZ  
Deputy County Attorney

By /s/ L. Kirk Nurmi  
L. Kirk Nurmi  
Counsel for Ms. Arias