

District Court Alamosa County, Colorado Alamosa County District Court 8955 Independence Way Alamosa, CO 81101	DATE FILED March 6, 2026 10:41 AM
THE PEOPLE OF THE STATE OF COLORADO vs. BARRY MORPHEW, Defendant	COURT USE ONLY
For the Intervenors: Malory and Macy Morphew ROBERTA M NIESLANIK, #14241 Attorney at Law 446 Main Street Grand Junction, CO 81501 bert@laddercanyonranch.com	Case Number: 25 CR 128
INTERVENORS' REPLY IN SUPPORT OF MOTION TO INTERVENE AND FOR ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER	

I. INTRODUCTION

Intervenors Malory Morphew and Macy Morphew (“Intervenors”) respectfully submit this Reply to the People’s Response (“Response”) opposing their Motion to Intervene and for Order to Show Cause and Temporary Restraining Order. The People’s Response is notable for what it lacks: it cites not a single case from a Colorado court, not a single constitutional provision directly addressing the rights at stake, and not one statute that specifically authorizes law enforcement or a prosecutor to commandeer the lawfully released remains of a murder victim from her own daughters. The Response offers only conclusory assertions. In a matter of such profound constitutional gravity — the government’s seizure of a mother’s body from her grieving daughters on the eve of her Christian burial — that is insufficient.

The People attempt to reframe this dispute as simply a discovery preservation issue. It is not. This case presents a direct conflict between (1) the clear, codified, statutory rights of adult children as the lawful next of kin to control the disposition of their mother’s remains, and (2) the prosecution’s attempt to retain those remains indefinitely — potentially through the duration of any and all future appeals — on the basis of speculative future evidentiary needs. Colorado law does not permit this result.

II. THE PEOPLE’S RESPONSE IS LEGALLY DEFICIENT ON ITS FACE

As a threshold matter, the People argue that the Motion should be denied because “the Intervenor’s cite no specific legal authority” for the relief requested. This argument is both procedurally and substantively backwards.

The Intervenor’s have the fundamental right of next of kin under Colorado statute. The burden is not on Intervenor’s to identify a statute that specifically prevents the government from interfering with that right — the burden is on the government to identify a statute that specifically authorizes such interference. See, e.g., *People v. Garlotte*, 958 P.2d 469, 474 (Colo. App. 1997) (the government must demonstrate a compelling interest and a narrowly tailored means when infringing constitutional rights). The Response cites this standard yet produces no case law authorizing the retention of remains from lawful next of kin indefinitely through the pendency of a murder prosecution.

Critically, the People’s Response itself cites no case — from Colorado or any other jurisdiction — holding that a valid search warrant authorizes the indefinite retention of a murder victim’s skeletal remains from the lawful next of kin throughout the entire pendency of criminal proceedings and post-conviction review. The People have inverted the constitutional burden of proof.

III. COLORADO STATUTORY LAW VESTS THE RIGHT OF FINAL DISPOSITION IN INTERVENORS

A. C.R.S. § 15-19-106 Grants Intervenor’s the Exclusive Right of Final Disposition

Colorado’s Disposition of Last Remains Act, C.R.S. §§ 15-19-101 et seq., sets forth a clear and detailed statutory hierarchy governing who has the right to control final disposition of a decedent’s remains. Under C.R.S. § 15-19-106(1), the right to control disposition vests in the following order of priority: (a) the decedent through a valid declaration; (b) an appointed personal representative; (c) a person designated in a designated beneficiary agreement; (d) a majority of surviving adult children; (e) surviving parents or legal guardians; and (f) a majority of surviving adult siblings.

Suzanne Morpew left no declaration regarding disposition of her remains. No personal representative has been appointed. Accordingly, under C.R.S. § 15-19-106(1)(d), the right of final disposition vests in Malory and Macy Morpew, as the majority of her surviving adult children. This right is not discretionary. It does not yield merely because a criminal prosecution is pending.

B. The Coroner’s Lawful Release of Remains Concluded the Coroner’s Jurisdiction

The People’s Response does not dispute that the Chaffee County Coroner formally released Suzanne Morpew’s remains in April 2024, more than a year before this prosecution was initiated. Under C.R.S. § 30-10-606, the coroner’s authority extends to taking “legal custody of the body” for the purpose of investigation, autopsy, and determination of cause and manner of death. Once

those purposes are fulfilled and the remains are released, the coroner's jurisdiction terminates. There is no statutory provision authorizing the coroner — or any other state official — to re-seize remains once they have been formally released to lawful next of kin absent a judicially issued warrant supported by a new and independent basis.

The critical question, which the People's Response does not address, is what statutory authority permitted the state to seize already-released remains from a funeral home where they had been placed at the direction of the decedent's adult children. The search warrant statute, C.R.S. § 16-3-301(2)(a), authorizes a warrant to search for "property which would be material evidence" in a prosecution. But a warrant does not, by its own force, create authority to retain that property indefinitely or to override the specific statutory rights of lawful next of kin. A warrant authorizes seizure — it does not extinguish the constitutional and statutory rights of third parties. The People cite no authority holding otherwise.

IV. THE VICTIM RIGHTS ACT SUPPORTS INTERVENORS' STANDING AND RIGHTS

The People assert that the Victim Rights Act, C.R.S. § 24-4.1-301 et seq., does not confer a right to possess remains. That narrow point may be conceded for purposes of this Reply, but the People miss the broader significance of the VRA to this proceeding.

The VRA, codified at C.R.S. § 24-4.1-302.5(1)(a), guarantees each victim "the right to be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse." Article II, Section 16A of the Colorado Constitution independently guarantees that surviving immediate family members of a deceased victim "shall have the right to be kept informed of the proceedings and the right to be present at all critical stages of the criminal justice process."

The People were obligated to consult with and notify Intervenor before taking any action affecting Suzanne Morpew's remains. The Response acknowledges that law enforcement did not contact Intervenor until after the warrant had already been sought and remains re-seized from the funeral home. This failure to consult or provide advance notice violated both the spirit and letter of the Victim Rights Act and is independently sufficient to support the relief requested here. Intervenor are entitled to a hearing, and the Court is entitled to consider whether the manner in which the seizure was effectuated was consistent with the rights guaranteed to Suzanne Morpew's daughters.

Furthermore, the People's interpretation of the VRA would produce an absurd result that the People themselves invoke the canon against absurdity to oppose. The People argue that interpreting the VRA to allow victims to possess remains would allow defendants to interfere with prosecutions. This argument misses the point entirely: the Intervenor are victims, not defendants.

V. THE PEOPLE'S JUSTIFICATION FOR INDEFINITE RETENTION IS SPECULATIVE AND NOT NARROWLY TAILORED

Even accepting that the government has a compelling interest in the integrity of criminal prosecutions, its conduct must be narrowly tailored to serve that interest. See *People v. Garlotte*, 958 P.2d at 474. The People's Response makes no effort to satisfy this requirement.

The People identify five speculative scenarios in which the remains might be needed: (1) the defense might challenge BAM testing and further testing might be needed; (2) if a suppression motion is granted, additional sampling might be sought; (3) if the Defendant is acquitted, the remains become evidence in an unsolved homicide; (4) future post-conviction attorneys might want access; and (5) *the remains may be needed for trial exhibits*. These justifications are remarkable for how far they extend the proposed retention period — potentially through decades of appeals and post-conviction proceedings.

None of the People's five scenarios requires retention of the entire skeletal remains and completely ignore the fact that the People **have** retained powdered bone that is not part of what was released. Narrow tailoring would require the People to identify with specificity which additional portions of the remains are necessary for each anticipated purpose, preserve those **additional** portions, and release the balance to Intervenors. The People have not explained why comprehensive scientific sampling, photography, DNA extraction, and forensic documentation cannot be performed now — prior to any scheduled motions hearing and well before the October 2026 trial date — to fully satisfy any future evidentiary need. The People have offered no explanation why the remains themselves, rather than preserved samples and thorough documentation, must be retained. Nor do the People posit any theory under which remains of a deceased are admissible as an exhibit in a criminal trial.

The People's conduct is further undermined by the circumstances of the release itself. Suzanne Morphey's remains were released by the El Paso County Coroner's Office to Swan Lake Funeral Home — the very facility selected by Intervenors for their mother's Christian burial service. For approximately one week, Intervenors reasonably relied on that release, made arrangements, and prepared to finally have closure. The People, law enforcement, and the Coroner's Office were aware of these circumstances and took no action to intervene until the eleventh hour — shattering the Morphey girls once again by their unprofessional and haphazard conduct. This conduct — allowing Intervenors to proceed in reasonable reliance on the lawful release and then seizing the remains without prior notice — constitutes precisely the kind of arbitrary government interference that due process prohibits. The government cannot stand by while a family plans a funeral and then, without warning, strip them of the remains they were lawfully entitled to possess. That is not narrow tailoring. It is ambush.

The VRA itself instructs agencies to “facilitate prompt return of a victim's property when it is no longer needed for evidentiary reasons.” While the remains are not personal property in the traditional sense, the principle is instructive: retention should be limited to what is genuinely

necessary, not extended by every conceivable hypothetical. A mother's body is not a fungible evidentiary exhibit to be warehoused indefinitely.

Intervenors do not seek to destroy evidence. They seek to bury their mother with dignity. These goals are not mutually exclusive. A narrowly tailored order could require the People to complete comprehensive sampling and documentation within a specified time — consistent with the motions and trial schedule this Court has already set — and then release the remains to Intervenors for burial. If the defense later challenges the testing and a court determines additional examination is necessary, that issue can be addressed at that time with appropriate court supervision. But the default position cannot be that remains are seized and held indefinitely at the whim of the prosecutors on the basis of what might someday be litigated.

VI. THE CONSTITUTIONAL ARGUMENTS ADVANCED IN THE MOTION REMAIN UNREBUTTED

The Motion raised First Amendment free exercise claims, Fourteenth Amendment liberty and due process claims, and claims under Article II, Sections 3, 4, 6, and 25 of the Colorado Constitution. The People's Response does not address a single one of these provisions on the merits. The Response cites two cases — *People v. Garlotte* and *People v. Fallis*, 2015 COA 75 — for the unremarkable proposition that the state may infringe fundamental rights if the infringement is narrowly tailored to a compelling interest. But the People then fail to demonstrate narrow tailoring. They assert it in a single conclusory paragraph without engaging the specific constitutional provisions at issue.

Intervenors maintain that the government's indefinite retention of a deceased mother's remains — preventing her daughters from conducting a Christian burial service in accordance with their religious beliefs — imposes a direct and substantial burden on the free exercise of religion protected by both the First Amendment and Article II, Section 4 of the Colorado Constitution. No case cited by the People addresses this specific burden. The Response does not identify any countervailing religious liberty analysis. The Court should therefore treat the constitutional arguments as conceded for purposes of the present motion.

VII. THE PEOPLE'S RELIANCE ON THE CREMATION FORMS IS MISPLACED

The People attach as an exhibit cremation authorization forms signed by Barry Morphew on February 11 and 13, 2026, and appear to treat this as material relevant to the nature of the proceedings. But as discussed above, these forms are void as a matter of law under C.R.S. § 12-135-301(2). A person charged with murder has no authority to authorize the disposition of his alleged victim's remains. The People cannot simultaneously argue that Barry Morphew's signature on cremation forms is relevant evidence of his culpability while also suggesting that his authorization of cremation was at some prior point a legally operative act.

The forms attached by the People are void as a matter of law under C.R.S. § 12-135-301(2) and have no bearing on whether Intervenors, as the lawful next of kin, are entitled to take possession of their mother's remains for burial. Moreover, the People's concern about future testing needs is completely diminished by the fact that the El Paso County Coroner's Office **still has** pulverized bone material available for further scientific analysis.

VIII. RELIEF REQUESTED

For the foregoing reasons, Intervenors respectfully request that this Court:

1. Issue an Order to Show Cause directing the People to appear and demonstrate, by specific statutory and constitutional authority, what justification exists for indefinitely withholding Suzanne Morpew's remains from her lawful next of kin;
2. Issue a Temporary Restraining Order prohibiting the People from further interfering with Intervenors' constitutional and statutory rights pending a full hearing;
3. Order the People to complete, within a time certain consistent with the Court's existing scheduling order, any additional sampling, testing, photography, or documentation they deem necessary, and thereafter release the remains to Intervenors for burial;
4. Award attorneys' fees and costs as authorized by 42 U.S.C. § 1988 and applicable state law; and
5. Grant such other and further relief as this Court deems just and proper.

IX. CONCLUSION

The People ask this Court to permit them to retain a murdered woman's remains indefinitely — potentially through decades of litigation — based on speculation about what may someday be “needed.” They do so without identifying a single case or statute specifically authorizing this result, without addressing the clear statutory rights of her daughters as lawful next of kin and without providing any meaningful analysis of whether their conduct is narrowly tailored to a compelling interest.

The law of Colorado is clear. Under C.R.S. § 15-19-106, the right of final disposition of Suzanne Morpew's remains belongs to Malory and Macy Morpew. That right is not extinguished by a search warrant and not overridden by a prosecution. This Court should grant the relief requested, protect the constitutional rights of these victims, and permit them to finally bury their mother with the dignity and faith that she deserves.

Respectfully submitted this 6th day of March, 2026.

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/s/ Roberta M Nieslanik

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Attorney for Intervenors Malory and Macy Morpew

Certificate of Service

I, hereby certify that on this 6th day of March, 2026, I caused the foregoing Reply to be filed in the Alamosa County District Court and served on all parties of record by Colorado Courts E Filing and Service.

/s/ Roberta M. Nieslanik