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Attorney for Defendant

**IN THE JUSTICE COURT**  
**COUNTY OF SANTA CRUZ, STATE OF ARIZONA**

State of Arizona,  Plaintiff  vs.  George Alan Kelly,  Defendant	Case Number: CF 23-041  <b>Motion to Modify Conditions of Release</b>  <b>Request to Exceed Page Limit</b>
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Judge: Hon. Emilio Velasquez

COMES NOW the defendant, George Alan Kelly (Mr. Kelly) by and through the undersigned attorney, and hereby respectfully requests that his conditions of release be modified.

Mr. Kelly respectfully requests that he be released on his own recognizance in this case. In the alternative, Mr. Kelly respectfully requests that he be released third party, or that his bond be reduced and/or converted to a surety bond.

Mr. Kelly's request is based on the factors outlined in Ariz. Const. Art. II Sect. 22, A.R.S. 13-3967, and Ariz. R. Crim. P. Rules 7.1 *et seq.* The reasons for Mr. Kelly's motion are more fully explained in the following Memorandum of Law:

1 **MEMORANDUM OF LAW**

2 **Facts**

3       On January 30, 2023, defendant, George Alan Kelly, reported the discovery of a body on his  
4 property near Kino Springs, where he and his wife have lived for the past two decades. Earlier in the  
5 day, Mr. Kelly had completed chores on his ranch and had come to his house to eat lunch with his  
6 wife. As they ate, Mr. Kelly heard a single gunshot. Next, he saw his horse—who is old—running  
7 away scared and at full speed. Finally, he saw a group of men moving through the trees around his  
8 home. They were armed with AK-47 rifles, dressed in khakis and camouflaged clothing, and carrying  
9 large backpacks. None of them were known to him. He had not given any of them permission to  
10 come onto his land. Based on the foregoing, Mr. Kelly was understandably concerned and reasonably  
11 feared for his safety, his wife's safety, and his animals' safety.  
12

13  
14       Mr. Kelly called the United States Border Patrol Ranch Liaison—specifically assigned to aid  
15 people living on borderlands—to report what he had seen and to summon immediate help. Mr. Kelly  
16 told his wife to stay inside, away from the windows, and to stay silent so as not to alert the men to her  
17 presence.  
18

19       Mr. Kelly then went onto his porch with his rifle. The leader of the armed group of men saw  
20 Mr. Kelly and pointed an AK-47 right at him. Mr. Kelly, fearing for his life and safety, fired several  
21 shots from his rifle, hoping to scare them away from him, his wife, his animals, and his home. As he  
22 shot, Mr. Kelly took care to aim well over the heads of the armed group of men. The group then  
23 began running into the desert surrounding his home. Once the group had fled, Mr. Kelly walked over  
24 to his barn to see if it was safe and secure.  
25

26       Mr. Kelly had a conversation with the Border Patrol Ranch Liaison again that ended at  
27 approximately 2:36 p.m. Mr. Kelly reported that he heard a single shot, and that the men he had seen  
28

1 were armed. The Border Patrol Ranch Liaison incorrectly reported that Mr. Kelly stated he could not  
2 tell whether the men were armed or not. However, the dispatch on the radio to the Border Patrol  
3 Agents en route (at about 2:40 p.m.) correctly reported that armed men had been seen in the area.

4 While Mr Kelly was checking his barn, a number of Border Patrol agents and Sheriffs  
5 Deputies arrived on the property. Border Patrol Agents encountered Mr. Kelly, who indicated to them  
6 that he had seen a group of armed men near his house.

7  
8 Sheriffs Deputies made contact with Mr. Kelly's wife, who also indicated that she had seen  
9 armed men near the house carrying large backpacks.

10 Border Patrol Agents and Sheriffs Deputies walked all over Mr. Kelly's property in search of  
11 the group of people, and did not find anybody. Border Patrol used various cameras in order to try to  
12 locate the men, but they were unsuccessful.

13  
14 After stating that they would document the incident, and to call if Mr. Kelly needed them  
15 again, law enforcement left the property.

16 Later that day, as the sun was going down, Mr. Kelly went to his pastures in order to check on  
17 his horse. He was still concerned that his horse might have been injured in the incident. Mr. Kelly  
18 took his dogs with him to check on the horse. After locating the horse, Mr. Kelly noticed that his  
19 dogs were focused on something on the ground near a mesquite tree. Mr. Kelly approached his dogs,  
20 and observed a body lying face down in the grass.

21  
22 Mr. Kelly was alarmed by this discovery, and he put a lit flashlight on the ground in order to  
23 be able to find the body again. Mr. Kelly then called the Border Patrol Ranch Liaison again in order  
24 to report the discovery and request assistance from law enforcement.

25  
26 When law enforcement arrived, Mr. Kelly helped them to find the body and he cooperated  
27 with their investigation.



1 During the investigation, it was discovered that the body was that of a male foreign national.  
2 The person did not have any firearms or a backpack on him. The cause of death appeared to be a  
3 single gun shot wound, and it appeared that the body was fresh. The person had a radio with him, and  
4 he was wearing tactical boots, indicating that he was possibly involved in illegal activity.

5 The investigation is ongoing, and disclosure is continuing to be made to the defense. It  
6 remains unknown what kind of bullet caused the wound to the person, what the time of death was,  
7 how long the body had been in that location, or where and in what position the person was in prior to  
8 receiving the fatal wound.

9 Mr. Kelly cooperated with law enforcement officials and provided an interview. He admitted  
10 to firing warning shots at the smugglers earlier in the day, but denied firing any shot directly at any  
11 person. He does not believe that any of his warning shots could have possibly hit the person or caused  
12 the death. All of the shooting that Mr. Kelly did on the date of the incident was in self-defense and  
13 justified.

14 Sheriff's Deputies arrested and booked Mr. Kelly. He has been charged with First Degree  
15 Murder, and is currently being held on a \$1,000,000.00 cash bond.

## 16 **Law and Analysis**

17 The rules governing conditions of release are codified at Ariz. Const. Art. II, Sec. 22, A.R.S.  
18 13- 3967, Ariz. R. Crim. P. Rules 7.1 *et seq.*

### 19 **I. CONSTITUTIONAL LAW REQUIRES THE DEFENDANT BE RELEASED**

20 Pursuant to Ariz. Const. Art. II, § 22(A), "All persons charged with crime shall be bailable by  
21 sufficient sureties, except: [(1) persons accused of capital offenses, sexual assault, or sexual conduct  
22 with a minor under 15 years of age; (2) persons who commit felonies while on bail; (3) persons who  
23 commit felonies and are a substantial danger to any other person or to the community; or (4) persons  
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25  
26  
27  
28

1 who commit serious felony offenses while they have entered or remained illegally in the United  
2 States[,]” and “the proof is evident or the presumption great as to the present charge.”

3 Under Ariz. Const. Art. II, § 22(B), the purposes of bail and conditions of release are as  
4 follows:

5  
6 **1. Assuring the appearance of the accused.**

7 Here, a bond is not necessary to assure Mr. Kelly’s appearance at his subsequent hearings in  
8 this case because his wife is willing to take him into their home and to monitor his conduct to ensure  
9 that he appears for his future hearings. If Mr. Kelly were to be released to her custody or on his own  
10 recognizance, he will readily and willingly comply with the terms and conditions of his release,  
11 including participating in pre-trial services, because he knows that both his liberty and his ability to  
12 care for his wife, animals, and ranch depend on it. Accordingly, the Court should release the  
13 defendant to the custody of his wife or on his own recognizance in lieu of keeping the defendant  
14 incarcerated on a bond. If the Court is not inclined to do so, the Court should hold him on a bond to  
15 be paid by an approved bonding company in an amount less than \$1,000,000.00.

16  
17 **2. Protecting against the intimidation of witnesses.**

18 Here, there is no evidence that Mr. Kelly has intimidated any witnesses, so the Court should  
19 not use this factor against him.

20  
21 **3. Protecting the safety of the victim, any other person or the community.**

22 Here, there is no evidence that the safety of a victim, other person, or community need to be  
23 protected from Mr. Kelly, so the Court should not use this factor against him.  
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1                   **II.     THE RULES OF CRIMINAL PROCEDURE REQUIRE THE DEFENDANT BE**  
2                                   **RELEASED**

3                   Rule 7.2 of the Arizona Rules of Criminal Procedure applies to this motion and reads as  
4 follows:  
5

6                   **(a) Before Conviction; Bailable Offenses.**

7                   **(1) Presumption of Innocence.** A defendant charged with a crime but not yet convicted is  
8 presumed to be innocent.

9                   **(2) Right to Release.** Except as these rules otherwise provide, any defendant charged with an  
10 offense bailable as a matter of right must be released pending and during trial on the  
11 defendant's own recognizance with only the mandatory conditions of release required under  
12 Rule 7.3(a), unless the court determines that additional conditions are reasonably necessary to  
13 assure the defendant's appearance or protect the victim, any other person, or the community  
14 from risk of harm by the defendant. If the court makes such a determination, it must impose  
15 the least onerous conditions of release set forth in Rule 7.3(c).

16                   **(3) Determining Method of Release or Bond Amount.** In determining the method of release  
17 or a bond amount, the court must take into account all of the factors set forth in A.R.S. § 13-  
18 3967(B).

19                   When determining a bond amount, the Arizona Rules of Criminal Procedure (Rule  
20 7.3(c)(2)(A) and (B) read as follows:  
21

22                   **(2) Monetary Conditions.**

23                   **(A) Generally.** A court's imposition of a monetary condition of release must be based on an  
24 individualized determination of the defendant's risk of non-appearance, risk of harm to  
25 others or the community, and the defendant's financial circumstances. The court may not  
26 rely on a schedule of charge-based bond amounts, and it must not impose a monetary  
27 condition that results in unnecessary pretrial incarceration solely because the defendant is  
28 unable to pay the imposed monetary condition.

**(B) Least Onerous Alternative.** If the court determines a monetary condition is necessary, it  
must impose the least onerous type of condition in the lowest amount necessary to secure the  
defendant's appearance or protect other persons or the community from risk of harm by the  
defendant



1           Simply put, the Court may not determine a bond amount that is designed for the sole purpose  
2 of keeping the defendant in custody. Rather, the Court must determine the lowest bond amount  
3 necessary to secure the defendant's appearance or protect persons or the community.

4           In the case at bar, considering the factors delineated above, the \$1,000,000.00 cash bond is  
5 clearly excessive and appears to be designed to keep defendant in custody while he fights to maintain  
6 his innocence. The Court is not permitted to set a bond amount that is designed for the sole purpose  
7 of keeping the defendant in custody. Rather, the Court must determine the lowest bond amount  
8 necessary to secure the defendant's appearance or to protect persons or the community. Based on the  
9 foregoing, Mr. Kelly is seeking a secured bond in a lower amount.  
10

### 11                           **III.     STATUTORY AUTHORITY REQUIRES THE DEFENDANT BE RELEASED**

12           The court is required to consider the factors laid out in A.R.S. 13-3967(B) in making a  
13 determination on conditions of release. Those factors are listed and discussed below.  
14

#### 15           **1. The views of the victim.**

16           The views of the alleged victim in this case are unknown.  
17

#### 18           **2. The nature and circumstances of the offense charged.**

19           The fact section of this motion describes the nature and circumstances of the offense charged.  
20 The offense charged is extremely serious, however it is the defense's position that this case is  
21 overcharged, and that Mr. Kelly's actions were justified.  
22

#### 23           **3. Whether the accused has a prior arrest or conviction for a serious offense or violent or** 24 **aggravated felony as defined in section 13-706 or an offense in another state that would be a** 25

1 *serious offense or violent or aggravated felony as defined in section 13-706 if committed in this*  
2 *state.*

3 Mr. Kelly has no criminal history.

4 ***4. Evidence that the accused poses a danger to others in the community.***

5 Mr. Kelly is not a danger to others in the community. He is 75 years old and has no history  
6 that would indicate he would harm any member of the community.

7 ***5. The results of a risk or lethality assessment in a domestic violence charge that is presented to the***  
8 ***court.***

9 N/A

10 ***6. The weight of evidence against the accused.***

11 The evidence against Mr. Kelly is extremely weak in this case. Law enforcement was not able  
12 to locate a body when they searched Mr. Kelly's property after Mr. Kelly fired shots to warn away  
13 the armed men. Mr. Kelly's actions are those of an innocent man. Mr. Kelly himself called law  
14 enforcement to report the discovery of the body. Mr. Kelly cooperated with the investigation and  
15 gave a statement to law enforcement.

16 No bullet has been found in order to do testing to determine which gun fired the fatal shot. It  
17 is entirely possible that the person found on Mr. Kelly's property was a victim of other drug  
18 traffickers. The radio found in possession of the deceased person indicates that this person was  
19 participating in smuggling activity on Mr. Kelly's property. The inherent dangers of illegal  
20 smuggling, along with the fact that a group of heavily armed men was seen in the area earlier in the  
21 day, strongly points to the conclusion that the deceased was a victim of drug trafficking related  
22 activity.



1 While perhaps not everyone would have fired warning shots in Mr. Kelly's situation, it is  
2 important to understand that Mr. Kelly did not ask to be confronted by a group of armed men  
3 trespassing on his land near his house. Mr. Kelly's actions were justified under the law as self-  
4 defense and defense of others.

5  
6 Quite simply, this is a case where an innocent man has been wrongfully accused of a crime.  
7 While the prosecutor believes that Mr. Kelly committed First Degree Murder, the shocking lack of  
8 evidence linking him to the body makes it a far stretch for anyone to believe that Mr. Kelly murdered  
9 an unarmed person on his land with premeditation. Of all possible explanations for this person's  
10 death, this is the least plausible. Had Mr. Kelly truly murdered someone with premeditation, then he  
11 would have had no incentive to call law enforcement and lead them to the body. On the contrary, he  
12 would have had every incentive to dispose of the body in the vast, isolated desert area surrounding  
13 his property. Mr. Kelly would have had plenty of opportunity to do so. Instead, he chose to alert law  
14 enforcement and to assist them in their investigation.

15  
16 ***7. The accused's family ties, employment, financial resources, character and mental condition.***

17  
18 Mr. Kelly has a wife and two sons. His family is extremely supportive of him. His sons are  
19 grown up and live out of state. One of them is a professor, and another is a professional horse trainer.  
20 Mr. Kelly has a number of grandchildren.

21 Mr. Kelly was born in North Carolina, and attended college. He married his wife in the  
22 1970's, and he has supported his family ever since. Mr. Kelly's background involves higher  
23 education in premed and prevet studies. It was Mr. Kelly's intention to go to vet school and become a  
24 veterinarian. However, when his wife became pregnant with their first child he began working. He  
25 worked for the National Park Service and for Fish and Wildlife, and eventually retired with his wife  
26 in Montana.  
27  
28

1 In Montana, Mr. Kelly and his wife opened a fishing lodge. Later, they allowed their children  
2 to run the business, and the business was eventually sold.

3 Mr. Kelly and his wife moved to Arizona in 1997 and began ranching. The land near Kino  
4 Springs was purchased by Mr. Kelly and his wife in 2002, and the house was built in 2008. He and  
5 his wife have been residing there ever since. Mr. Kelly and his wife's only income is their social  
6 security.  
7

8 The land and house they own free and clear, and they also own land near Springerville,  
9 Arizona. Mr. Kelly's assets are limited, and they are not liquid. He describes himself as being "land  
10 rich and dollar poor."  
11

12 In terms of his character and mental condition, Mr. Kelly is mentally healthy and stable. Mr.  
13 Kelly has many friends that support him, and he has maintained friendships over many years. Mr.  
14 Kelly is not a flight risk of any kind. He firmly believes in his innocence, and he is committed to  
15 being close to his wife to emotionally support her in this difficult time. Mr. Kelly has no criminal  
16 history, no trouble with the law, no problems with drugs or alcohol, and he has always supported  
17 himself and his family.  
18

19 Mr. Kelly is a man of excellent character. He is elderly and he forgets things sometimes, but  
20 he is mentally sound and stable.

21 ***8. The results of any drug test submitted to the court.***

22 Mr. Kelly has never used drugs (including marijuana).  
23

24 ***9. Whether the accused is using any substance if its possession or use is illegal pursuant to chapter***  
25 ***34 of this title.***

26 N/A  
27  
28

1 *10. Whether the accused violated section 13-3407, subsection A, paragraph 2, 3, 4 or 7 involving*  
2 *methamphetamine or section 13-3407.01.*

3 N/A

4 *11. The length of residence in the community.*

5 Mr. Kelly has lived in this community since 1997 (approximately 26 years).

6 *12. The accused's record of arrests and convictions.*

7 Mr. Kelly has never been arrested or convicted of any previous offense.

8 *13. The accused's record of appearance at court proceedings or of flight to avoid prosecution or*  
9 *failure to appear at court proceedings.*

10 Mr. Kelly has always appeared in court when necessary. He has had some civil litigation in  
11 the past regarding his property and he was always compliant with court orders.

12 *14. Whether the accused has entered or remained in the United States illegally.*

13 Mr. Kelly is a United States Citizen. He was born in Charlotte, North Carolina.

14 *15. Whether the accused's residence is in this state, in another state or outside the United States.*

15 Mr. Kelly's residence is here in Arizona.

16 **IV. OTHER FACTORS**

17 In addition to the above-factors, it is important for the court to be aware of the fact that Mr.  
18 Kelly has received some significant threats against his person by other inmates in the jail. As a result,  
19 Mr. Kelly has been moved to protective custody and is on 23 hour lockdown.

20 Mr. Kelly has some medical issues due to his age. In order to protect his privacy, the  
21 undersigned will not discuss those issues in detail in this motion. Suffice it to say that Mr. Kelly has  
22 had to go to the doctor in order to get medical professionals to convince the jail to give him a  
23 mattress that is necessary to manage his medical conditions.



1 This case has also garnered a remarkable amount of media attention. Mr. Kelly is concerned  
2 about his safety and wellbeing, as well as that of his wife and sons as a result of the attention being  
3 drawn to the case. Mr. Kelly and his family are private people, and will not be engaging with media  
4 regarding this case at this time.

5  
6 Finally, this case will require significant time and preparation before the parties are ready to  
7 go to trial. The defense will be requesting the services of investigators, mitigation specialists, and  
8 various experts in order to prepare a defense. Holding Mr. Kelly in what is essentially solitary  
9 confinement until the case is ready for trial amounts to cruel and unusual punishment.

10  
11  
12 **Conclusion**

13 Based on the factors outlined above and how Mr. Kelly's particular circumstances apply to  
14 each factor, Mr. Kelly respectfully requests that he be released on his own recognizance or to a third  
15 party (his wife) or, if the Court is not inclined to do so, on a bond to be paid by an approved bonding  
16 company in an amount less than \$1,000,000.00.

17 This motion may be supplemented with a proffer of bond after consulting with a bonding  
18 company.

19  
20 The defense respectfully requests permission to exceed the page limit for this motion.

21  
22  
23 RESPECTFULLY SUBMITTED this 9 day of February month, 2023.

24  
25  
26 /s/ Brenna Larkin  
27 Brenna Larkin, Attorney for Defendant  
28

1 Copies of the foregoing  
2 Sent/delivered this 9 day of Feb. month, 2023 to:

3 Kimberly Hunley  
4 Deputy County Attorney  
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