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13 Attorneys for Defendant **ARIAS**

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

16 THE STATE OF ARIZONA	}	No. CR 2008-031021-001DT
17 Plaintiff,	}	
18 vs.	}	<b>MOTION FOR CHANGE OF</b>
19 JODI ANN ARIAS,	}	<b>VENUE</b>
20 Defendant.	}	(Evidentiary Hearing Requested)
	}	(Hon. Sherry Stephens)

21 COMES NOW Jodi Arias, by and through counsel undersigned, and pursuant to  
22 Rule 10.3, Arizona Rules of Criminal Procedure, the Fifth, Sixth, Eighth, and Fourteenth  
23 Amendments of the United States Constitution, as well as Article 2, sections 4, 10, 15,  
24 and 24 of the Arizona Constitution, to move this court to change the venue in his case.  
25 Defendant's Motion is based on the attached Memorandum of Points and Authorities that  
26 is incorporated herein by reference as well as the entire record of the first trial, including  
27 pretrial motions, which were filed before the trial began on December 10, 2012.  
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1 **Television News Stories**

2 Maricopa County 2,540 stories

3 Pima County 1,055 stories

4 Yuma County 119 stories

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6 **Newspapers**

7 Maricopa County 205 articles

8 Pima County 61 articles

9 Pinal County 30 articles

10 Yavapai County 12 articles

11 Mohave County 8 articles

12 Coconino County 3 articles

13 Santa Cruz County 1 article

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16 Thus the ultimate question is, given the plethora of unrestrained and bombastic coverage  
17 of the previous proceedings, can a fair and impartial jury be found in Maricopa County.

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19 **II. LAW AND ARGUMENT**

20 Pursuant to the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United  
21 States Constitution, as well as Article 2, sections 4, 10, 15, and 24 of the Arizona  
22 Constitution, Ms. Arias is entitled to have her retrial heard in front of a fair and impartial  
23 jury. When society seeks to kill one of its members the highest standards are applied.  
24 Juelich v. United States, 214 F.2d 950, 955 (5th Cir. 1954).

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2 **A. The plethora of information disseminated about the prior proceeding prevents Ms.**  
3 **Arias from receiving a fair trial in Marixopa County**

4 “A motion for change of venue ... shall be granted whenever it is determined that because of  
5 the dissemination of potentially prejudicial material, there is a reasonable likelihood that in the  
6 absence of such relief, a fair trial cannot be had.” ABA Standards Relating to Fair Trial and Free  
7 Press, Section 3.2 (1968)(emphasis added). The United States Supreme Court has insisted that  
8 an accused be tried by “a public tribunal free of prejudice, passion, excitement, and tyrannical  
9 power.” Chambers v. Florida, 309 U.S. 227, 236-237 (1940). The Court has likewise  
10 recognized that failure to ensure the impartiality of a jury “violates even the minimal standards  
11 of due process.” Irvin v. Dowd, 366 U.S. 717, 722 (1961), *superseded on other grounds by*  
12 *statute*. In this regard, this court must be cognizant of the fact that “[t]he television camera is a  
13 powerful weapon. Intentionally or inadvertently it can destroy and his case in the eyes of the  
14 public.” Estes v. Texas 381 U.S. 532, 549 (1965).

15 In Sheppard v. Maxwell, 384 U.S. 333, 351 (1966), the Court ruled that the Constitution  
16 requires that, in a criminal case, “the jury's verdict be based on evidence received in open court,  
17 not from outside sources.” Although potential jurors undoubtedly will be questioned at length  
18 about their knowledge of Ms. Arias’ case, the Court in Sheppard noted, “we (do) not consider  
19 dispositive the statements of (jurors) that (they) would not be influenced by news articles, that  
20 (they) could decide the case only on the evidence of record, and that (they) felt no prejudice  
21 against (the defendant) as a result of the articles (in the media).” Sheppard, 384 U.S. at 351  
22 (quoting Marshall v. United States, 360 U.S. 310, 312 (1959)). As the Court in Sheppard held,  
23 “(g)iven the pervasiveness of modern communication and the difficulty of effacing prejudicial  
24 publicity from the minds of jurors, the trial courts must take strong measures to ensure that the  
25 balance is never weighed against the accused.” Sheppard, 384 U.S. at 362. Finally, it is also  
26 important to note that Sheppard, like the instant case, was a capital case. The Court in Sheppard  
27 took pains to note that “[w]ith his life at stake, it is not requiring too much that (the defendant) be  
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1 tried in an atmosphere undisturbed by (prejudicial pretrial publicity) ...” Sheppard, 384 U.S. at  
2 351 (quoting Irvin, 366 U.S. at 728).

3 In resolving the critical issue presented by this motion, this Court should be guided by the  
4 words of the Supreme Court of Florida in deciding this same issue in another capital case:

5 We take care to make clear, however, that every trial court in  
6 considering a motion for change of venue must liberally resolve in  
7 favor of the defendant any doubt as to the ability of the State to  
8 furnish a defendant a trial by a fair and impartial jury. Every  
9 reasonable precaution should be taken to preserve to a defendant  
10 trial by such a jury and to this end if there is reasonable basis  
shown for a change of venue a motion therefore properly made  
should be granted.

11 A change of venue may sometimes inconvenience the State, yet we  
12 can see no way in which it can cause any real damage to it. On the  
13 other hand, granting a change of venue in a questionable case is  
14 certain to eliminate a possible error and to eliminate a costly retrial  
15 if it be determined that the venue should have been changed. More  
important is the fact that the real impairment of the right of a  
defendant to trial by a fair to grant change of venue.

16 Singer v. State, 109 So. 2d 7, 14 (Fla. 1959)(reversing a defendant's conviction and death  
17 sentence because of the trial court's failure to grant a change of venue).

18 **B. The State’s Death Penalty Request Must Inform the Court’s Venue Decision.**

19 The United States Supreme Court has consistently recognized that, in capital cases, both  
20 the guilt and penalty determinations must be structured to assure heightened reliability, not to  
21 permit findings whose reliability is diminished. Ford v. Wainwright, 477 U.S. 399, 411 (1986);  
22 Caldwell v. Mississippi, 472 U.S. 320, 343 (1985)(O'Connor, J., concurring); Beck v. Alabama,  
23 447 U.S. 625, 638 (1980); Lockett v. Ohio, 438 U.S. 586, 605 (1978); Gardner v. Florida, 430  
24 U.S. 349, 357-58 (1977); Woodson v. North Carolina, 428 U.S. 280, 305 (1976). To ensure the  
25 requisite degree of reliability, the Court has required additional safeguards not present in  
26 noncapital cases. Reid v. Covert, 354 U.S. 1, 45-46 (1957)(Frankfurter, J., concurring)(“It is in  
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1 capital cases especially that the balance of conflicting interests must be weighted most heavily in  
2 favor of the procedural safeguards of the Bill of Rights.”).

3 Courts around the country have followed the United States Supreme Court's mandate by  
4 recognizing that “a trial court should ... be particularly sensitive to the need for a change of  
5 venue in capital cases.” Johnson v. State, 476 So. 2d 1195, 1214 (Miss. 1985)(reversing  
6 conviction and death sentence because of failure to grant change of venue). While it is hardly  
7 uncommon for a change of venue to be warranted in a noncapital case,<sup>1</sup> it is in death penalty  
8 cases that courts have most closely scrutinized the need for a change of venue to affect a capital  
9 defendant's constitutionally protected rights to a fair trial and a constitutionally reliable  
10 sentencing hearing. See, e.g., Jones v. State, 261 Ga. 665, 409 S.E.2d 642 (1991); State v.  
11 Brown, 496 So. 2d 261 (La. 1986); and State v. Bey, 96 N.J. 625 (1984)(*overruled by statute on*  
12 *other grounds as stated in State v. Biegenwald*, 106 N.J. 13, 53 n.7 (1987)), 477 A.2d 315 (1984)  
13 (all reversing convictions and death sentences due to failure to grant change of venue); see also,  
14 Coleman v. Kemp, 778 F.2d 1487 (11th Cir. 1985)(granting writ of habeas corpus and vacating  
15 conviction and death sentence due to failure to grant change of venue); and Wansley v. Miller,  
16 353 F.Supp. 42 (D.C.Va. 1973)(same).

17 This recognition of the importance of a change of venue in capital cases is scarcely a new  
18 or novel idea. Indeed, courts have long recognized that when a person is charged with the  
19 commission of the grave crime of murder and stands to receive society's ultimate punishment if  
20 convicted, that person has the right to be tried by an impartial jury in a community where the  
21 case has not been prejudiced or prejudged. See State v. Canada, 48 Iowa 448 (1878)(reversing  
22 murder conviction and death sentence because of failure to change venue); and State v. Craften,

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23 1 Convictions have been reversed in a wide variety of noncapital cases, of course. See e.g. Coates  
24 v. State, 773 P.2d 1281 (Okla.Crim. 1989)(embezzlement); Nickolai v. State, 708 P.2d 1292 (Alaska App.  
25 1985)(second degree murder); State v. Paisley, 663 P.2d 322 (Mont. 1983)(sexual intercourse without  
26 consent, felony sexual assault, and misdemeanor sexual assault); People v. Acomb, 94 A.D.2d 978, 464  
27 N.Y.S.2d 103 (4th Dept. 1983)(manslaughter); Com. v. Casper, 375 A.2d 737 (Pa. Super 1977)(extortion  
28 and menacing); State v. Shawan, 77 N.M. 354, 423 P.2d 39 (1967)(assault with intent to kill); Forsythe v.  
State, 12 Ohio Misc. 99, 41 Ohio Ops. 2d 104, 230 N.E.2d 681 (1967)(manslaughter); Com. v. Mainier,  
26 Pa. D&C 2d 540 (1961)(burglary and bribery of a police officer); Williams v. State, 162 Tex.Crim.  
202, 283 S.W.2d 239 (1955)(rape); and People v. Lucas, 131 Misc. 664, 228 N.Y.S. 31 (1928)(larceny  
and fraud).

1 89 Iowa 109, 56 N.W. 257 (1893)(same); see also State v. Meyer, 181 Iowa 440, 164 N.W. 794  
2 (1917).

3 Courts throughout the country have not hesitated to consider “that in capital cases the  
4 factor of gravity (of potential punishment) must weigh heavily in a determination regarding the  
5 change of venue.” People v. Williams, 48 Cal. 3d 1112, 259 Cal. Rptr. 473, 774 P.2d 146, 157  
6 (1989)(quotation omitted)( reversing murder conviction and death sentence because of failure to  
7 change venue); see also Com. v. Daugherty, 493 Pa. 273, 426 A.2d 104 (1981)(same); State v.  
8 Dryman, 127 Mont. 579, 269 P.2d 796 (1954)(same).

9 At least six (6) states which have the death penalty as a potential punishment have  
10 explicitly recognized that a different standard must be used in determining where a defendant can  
11 get a fair trial when his life is at stake. Jones v. State, supra, 409 S.E.2d at 643; People v.  
12 Williams, supra, 774 P.2d at 157; State v. James, 99 Utah Adv. Rep. 14, 767 P.2d 549, 553;  
13 Fisher v. State, 481 So. 2d 203, 216 (Miss. 1985); State v. Bey, supra, 477 A.2d at 317-318; and  
14 Forsythe v. State, 12 Ohio Misc. 99, 230 N.E.2d 681, 686 (Ohio 1967). The accused's  
15 constitutionally protected rights to due process, a fair trial before an impartial jury, and the  
16 heightened degree of reliability necessary to both the guilt and penalty determination in a capital  
17 case require this Court to give explicit consideration to the potential punishment the accused  
18 stands to receive if convicted in this case when determining the appropriate venue for this cause.

19 The words of the Fifth Circuit Court of Appeals, in reversing a conviction and death  
20 sentence because of the trial court's failure to grant a change of venue, exemplify the standard by  
21 which the issue here presented must be measured.

22  
23 When the life of a man hangs in the balance we should insist that  
24 the fullest protection of his right to a trial before a fair and  
25 impartial jury should be accorded him. Society is here attempting  
26 to take away the life of one of its members. That attempt must be  
27 tested by the highest standards of justice and fairness that we  
28 know.

Juelich v. United States, 214 F.2d 950, 955 (5th Cir. 1954).

1       **C. Recent Arizona Case Law Supports Ms. Arias' Position**

2       On August 21, 2013, The Arizona Supreme Court decided State v. Payne CR-09-0081-AP.  
3 Relevant to this motion was Mr. Payne's assertion that his trial court abused its discretion by  
4 denying his motion for a change of venue. While ultimately, the Payne Court determined that  
5 the trial court did not abuse its discretion the reasoning behind the court's decision support Ms.  
6 Arias' position in that resolving the issue the court stated:

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8           A defendant is entitled to a change of venue for his trial "if a fair an impartial trial  
9 cannot be had. Ariz. R. Crim. Pro 10.3(a). To show resumed prejudice, a defendant must  
10 show that the publicity "was so extensive or outrageous that it permeated the proceedings  
11 or created a carnival like atmosphere" State v. Blakely, 204 Ariz. 429, 434, 65 P.3d  
12 77,82 (2003). (internal quotation marks omitted) (quoting State v. Atwood, 171 Ariz.  
13 576, 631, 832 P.2d 593, 648(1992)). The publicity must be so prejudicial that the jurors  
14 could not decide the case fairly. State v. Nordstrom, 200 Ariz. 229, 239, 25 P.3d 717,727  
(2001), *abrogated on other grounds by Ferrer*, 229 Ariz. At 243, 274 Ariz. At 513. We  
examine whether the publicity was chiefly factual and non-inflammatory and the amount  
of time between coverage and trial. See State v. Davolt, 207 Ariz 191,206, 84 P.3d 456,  
471 (2004).

15 Payne at page 8.

16       The Payne decision favors Ms. Arias' motion because it lays out a fairly clear criteria that  
17 Ms. Arias definitely meets in that the publicity documented on the Data Disc demonstrates that  
18 the publicity at issue was extensive and outrageous both in size and content. Furthermore, it  
19 would be hard to argue that this publicity at issue did not create a circus like atmosphere. Bearing  
20 in mind that by in large, the publicity regarding the trial was highly inflammatory with Ms. Arias  
21 frequently being referred to as a stalker, a liar, crazy and a seductress. Which bring these future  
22 proceedings to a point where Ms. Arias cannot get a fair trial in Maricopa County.  
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1 **III. Conclusion**

2 Both the nature and extent of the publicity surrounding Ms. Arias' case render it  
3 impossible that the accused will receive a fair trial in this capital case if it is tried in Maricopa  
4 County.

5 The accused's case has received widespread, unfair, and prejudicial coverage from the  
6 Maricopa County focused media outlets as well as national networks which blankets the county  
7 and its potential jury pool. The accused's motion for change of venue in this case does not  
8 impugn, in any way, the general character or impartiality of Maricopa County residents. As the  
9 Court of Criminal Appeals of Texas eloquently phrased it:

10 A change of venue by a trial court of his own motion, or by  
11 granting a motion to change the venue of a criminal case, is not an  
12 indictment against or a challenge to the honesty, integrity, or  
13 ability of the citizenship of a county to give one accused of crime a  
14 fair and impartial trial. The Constitution guarantees to every  
15 person accused of crime a fair and impartial trial. It is in the  
16 furtherance of this guarantee that provision is made for changing  
the venue of trial. If the facts, separately or collectively, render it  
improbable that, pursuing the methods provided, a fair and  
impartial trial can be had, a change of venue should be ordered.

17 Rogers v. State, 236 S.W.2d 141, 143 (Tex. Crim. App. 1951)(reversing the defendant's  
18 conviction and death sentence because of the trial court's failure to grant a change of venue).

19 WHEREFORE, for all of the foregoing reasons, this Court must grant the accused's  
20 motion for change of venue and transfer this cause to another county outside the sphere of  
21 publicity generated by this case. The accused requests a hearing on this motion.

22  
23 RESPECTFULLY SUBMITTED, this 27<sup>TH</sup> day of August, 2013

24 LAW OFFICES OF L. KIRK NURMI

25 By: /s/ L. Kirk Nurmi \_\_\_\_\_  
26 L. Kirk Nurmi  
27 Attorney at Law  
28 Attorney for the Defendant

1 Copy of the forgoing E-filed/  
2 Electronically Delivered this 27<sup>th</sup> day of  
3 August, 2013, to:

4 Honorable Sherry Stephens  
5 Judge of the Superior Court

6 Juan Martinez  
7 Deputy County Attorney

8  
9 By */s/L. Kirk Nurmi* \_\_\_\_\_  
10 L. Kirk Nurmi  
11 Attorney for the Defendant  
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