

No. \_\_\_\_\_

EX PARTE

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IN THE JUSTICE COURT

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PRECINCT FOUR

JOE SMITH

)

WILSON COUNTY, TEXAS

**MOTION TO MODIFY  
ORDER FOR EMERGENCY PROTECTION**

TO THE HONORABLE JUDGE OF THE COURT:

Joe Smith moves, pursuant to article 17.292(j) of the Texas Code of Criminal Procedure, to modify the Magistrates's Order For Emergency Protection issued by this Court on January 28, 2016,.

I.

Mr. Smith was arrested on January 1, 2016 for the offenses of aggravated assault (two counts), and interference with an emergency request for assistance. It is alleged that Mr. Smith kicked his live-in girlfriend, Mary Jones, and pointed a loaded gun at her and her 18 year old son, Jim Jones. On that date, this Court issued an emergency protective order that, among other things, prevents Mr. Smith from being within 200 yards of 301 Elm Drive, LaVernia, TX, 78121, and Smith Contracting, 901 U.S. Hwy 90, San Antonio, TX 78263. Mr. Smith denies the truth of these charges and will plead not guilty to them should he ever be formally charged.

## II.

Texas law provides that the issuing court may modify its order if it finds: “(1) the order as originally issued is unworkable; (2) the modification will not place the victim of the offense at greater risk than did the original order; and (3) the modification will not in any way endanger a person protected under the order.” TEX. CODE CRIM. PROC. ANN. § 17.292(j). Mr. Smith will show that modification is appropriate under this standard.

## III.

The order as originally issued is now “unworkable.” Mr. Smith purchased the home on Elm on or about 2008, and Ms. Jones and her children moved in. Mr. Smith has made all the payments on the home since that time, and Ms Jones has made none. He and Ms. Jones are not married, and never have been. Ms. Jones has no legal ownership interest in the home, whatsoever, and never has. Additionally, Ms. Jones owns two homes herself in Wilson County, and she and her children can make arrangements to return to live in those homes and will not suffer any hardship if they have to live in another place besides Mr. Smith’s home. Ms. Jones can also live with her father in San Antonio. Mr. Smith, on the other hand, does not have another home, and will incur substantial and unnecessary cost and inconvenience if he is forced to live elsewhere. He is an owner of Smith Contracting, and has been since 2007. Mr. Smith hired Ms. Jones on or about 2008 but she no longer works there. It will be a substantial hardship to himself and numerous employees and customers if Mr. Smith is prohibited from the

premises of the business that he owns.

Finally, Joe Smith is not guilty of the crimes he is charged with. It is unfair to banish him from his home and business based on allegations that are untrue, and crimes he did not commit.

Modification of the order to allow Mr. Smith to return to live at the home he owns, and to work at the business he owns will not endanger Ms. Jones or Mr. Jones in any way, or place them in any risk whatsoever. Mr. Smith assures the Court that he will make no effort to contact Ms. Jones or Mr. Jones, and that he will not go near wherever they choose to live or work.

#### IV.

We have delivered a copy of this motion to the Wilson County District Attorney's Office. Joe Smith respectfully moves that this Court modify its order of emergency protection issued on January 1, 2016 to allow him to return to his home and business.

Respectfully submitted:

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Attorney for Movant

**CERTIFICATE OF SERVICE**

I certify that a copy of this motion delivered on February 15, 2016 to the Wilson County District Attorney's Office in Floresville, Texas.

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MARK STEVENS

**ORDER**

On this the \_\_\_\_ day of \_\_\_\_\_, 2016, came to be considered a Motion To Modify Order For Emergency Protection, and said motion is hereby

(GRANTED)

(DENIED)

Accordingly, that portion of the Magistrate's Order For Emergency Protection is modified to delete the following language: "going within 200 yards of 300 Elm Drive, LaVernia, TX, 78121, and Smith Contracting, 901 U.S. Hwy 90, San Antonio, TX 78263."

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JUDGE PRESIDING