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3 Pro Se

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5 IN THE PRESCOTT JUSTICE COURT
IN THE COUNTY OF YAVAPAI

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7 MELODY THOMAS-MORGAN
(f.k.a. Melody A. Bodine),

8 Petitioner-Plaintiff,

9 vs.

10
11 PETER MICHAEL PALMER,

12 Defendant.
13
14

Case No. 20110110J

**EMERGENCY PETITION
TO RESCIND UNLAWFUL
BRADY
DISQUALIFICATION**

15 **PREAMBLE**

16 Please know that Judge Markham is disqualified from hearing this petition due to
17 conflict of interest. (See his Order, Appendix A.)

18 Pro se defendant Peter M. Palmer files this emergency petition asking the court to
19 simply correct its error and immediately rescind its unlawful Brady Disqualification
20 against defendant, as it did in the past with this same error with this same defendant and
21 plaintiff. (See Exhibit 1, a previous order from this court granting a similar petition to
22 rescind Brady Disqualification three years ago.) Quite simply, Brady does not apply
23 because this is not a domestic violence matter.

24 Please note that defendant is NOT invoking his right to challenge or modify the
25 Injunction proper at this time. **Defendant is not asking for a hearing at this time.**
26 (Defendant reserves that right for a later time.) Nor is a hearing necessary to adjudicate
27 this petition. Defendant is simply asking the court to comply with state and federal law,
28 to rescind its unlawful Brady Disqualification, per the memorandum and point of

1 authorities below.

2 **MEMORANDUM AND POINTS OF AUTHORITIES**

3 This matter arises out of an ex parte hearing for a civil Injunction Against
4 Harassment where the court issued an ex parte injunction prohibiting defendant from
5 possessing firearms.

6 Defendant has subsequently learned from the Arizona Department of Public
7 Safety (DPS) that, as a proximate result this court's action, defendant's name has been
8 entered into the FBI's National Crime Information Center (NCIC) Database, listing him
9 as a "criminal Domestic Violence offender" and "Brady Positive." Defendant has
10 essentially been reduced to a criminal—a felon (prohibited possessor) by way of a civil
11 action. Without a trial! This is wrong.

12 First and foremost, the controlling law for civil Injunctions against Harassment,
13 A.R.S. § 12-1809, does not provide for firearm restrictions. The words "firearm" or
14 "weapon" are not in the statute.¹ Therefore, Brady cannot apply.

15 Consistent with this, 18 U.S.C. § 922—the very law this court cites as the basis
16 for the “Notice to Sheriff of Brady Disqualification” it transmitted to the Yavapai
17 County Sheriff—applies only to “intimate partners.” Per 18 U.S.C. § 921(a)(32), “the
18 term ‘intimate partner’ means, with respect to a person, the spouse of the person, a
19 former spouse of the person, an individual who is a parent of a child of the person, and
20 an individual who cohabitates or has cohabited with the person.”

21 But per plaintiff's sworn petition, plaintiff and defendant have never been
22 "intimate partners." Defendant is merely plaintiff's ex-husband's friend. This is not a
23 criminal DV situation, but a civil IAH. As such, there is no basis for Brady

24 _____

25 ¹ Per Judge Ronald Karp of the Arizona Supreme Court's *Committee on the*
26 *Impact of Domestic Violence and the Courts* (CIDVC), confusion over this fact arises
27 from the "one form fits all" approach the CIDVC took years ago, which commingles
28 criminal DV law with civil IAH law on the same "protective order" form. But firearm
prohibition can only be checked off on criminal DV matters.

1 Disqualification and therefore, Brady cannot apply.

2 Even if Brady could apply to civil injunctions, it cannot apply ex parte. Judge
3 Ronan, chair of the Arizona Supreme Court's *Committee on the Impact of Domestic*
4 *Violence and the Courts*, has unequivocally stated that, by law, "Brady also has due
5 process requirements that must be met. Brady applies only if the [criminal domestic
6 violence] protective order was issued at a hearing of which the defendant received actual
7 notice and in which he or she had an opportunity to participate. 18 U.S.C. § 922(g)(8).

8 **Therefore, Brady cannot apply to an ex parte hearing, regardless of the parties'**
9 **relationship.**"² And yet, contrary to Judge Ronan and federal law, this court has applied
10 Brady to an ex parte hearing, depriving defendant of due process.

11 Thus, for any or all these reasons, when this court sent a Brady Notification to the
12 Yavapai County Sheriff's office listing the defendant as "Brady Positive" and a
13 "Criminal Domestic Violence offender," this court erred and consequently, violated state
14 and federal law. Defendant simply asks this court to comply with the law.

15 **REQUESTED RELIEF**

16 Therefore, because Brady does not apply here, defendant simply asks the court to
17 correct its error and immediately order the Yavapai County Sheriff Office to remove
18 defendant's name from the NCIC, as it did previously in May 2009. (Per Exhibit 1.)

19 Additionally, given the prior history that's accrued, defendant has learned from
20 DPS that, even when the Sheriff sends a "Brady Negative" notification to the FBI, the
21 mark never goes away. According to the DPS, even though my previous Brady
22 Notification was rescinded, I still show on the NCIC as having a history of domestic
23 violence. But I'm still a virgin! I've never been domestic with anyone. Unless this court
24 takes affirmative action to correct the record, I will be forever listed as a prior criminal
25 domestic violence offender as a result of mere civil injunctions. As a result, I will suffer

26
27 ² See Judge Ronan's comment to petition R-12-0007 in the Arizona Supreme
28 Court's public forum.

1 whenever a criminal background checked is performed on me. (I have confirmed that the
2 NCIC is not correctable by private individuals. In fact, like the TSA's "No Fly list," the
3 record is not subject to FOIA requests.)

4 Therefore, since it is this court who has caused this harm, I ask the court to order
5 the sheriff's office to pursue the procedure to correct the errant NCIC record, to purge
6 my name from the FBI's NCIC database (and also Arizona's Criminal Justice Information
7 System (ACJIS)) in this instant action and the May 2009 one, both caused by unlawful
8 Brady Notifications against me by this court.

9 Defendant requests a copy of said orders from this court and confirmation from
10 the Yavapai County Sheriff that Peter Michael Palmer's criminal "domestic violence"
11 history has been purged from the FBI's and State's record.

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13 DATED this _____ day of June, 2012

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16 By: _____
17 P. "Mike" Palmer
18 Pro se
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Certificate of Service:

Defendant files this petition ex parte because, in a previous injunction with this same plaintiff, contrary to Rule 5(a) of Civil Procedure to serve all papers on plaintiff (and contrary to Superior Court Judge Bluff's Order ordering same during appeal), Justice of the Peace Markham ordered this defendant (via a phone call from his clerk, and in writing below) NOT to serve court papers on plaintiff.

In fact, Judge Markham hinted at criminal sanctions if I served court papers on plaintiff. (Appendix B.) As the statutes are quite unforgiving for violating an Injunction, lawful or not, pro se defendant, even acting as his own attorney, will not risk the legitimate act of serving a copy of this petition on plaintiff.

Since the petition before the court is black-letter law and defendant has prevailed before in this instant matter; and since there is no genuine controversy of material fact; and since this is not a motion, no response is needed from plaintiff. And since this court issued this unlawful Brady Notification ex parte, it only seems fitting it should rescind the Brady Notification ex parte.

However, defendant has included an extra copy of this petition if the court wishes to incur the expense of mailing it to the plaintiff at whatever address she may be.