

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

U.S. DISTRICT COURT
DISTRICT OF N.H.
FILED

UNITED STATES OF AMERICA)
)
)
)
v.)
)
ELAINE A. BROWN, and)
EDWARD LEWIS BROWN,)
Defendants)
_____)

2006 OCT 16 P 12: 04

Criminal No. 1:06-cr-00071-SM

**NOTICE AND MOTION FOR COURT ORDER
TO RETURN PERSONAL PROPERTY**

JUDICIAL AND ADMINISTRATIVE NOTICE

The Defendants in propria persona without representation by an attorney notice this court and all parties involved in the above captioned case, of this their motion, for Court Order to Return Personal Property, and the memorandum included herein. Officers of the court are hereby noticed of their continuing duty under authority of the supremacy; equal protection and full faith and credit clauses of the United States Constitution and the common law authorities of Haines v Kerner, 404 U.S. 519-421, Platsky v. C.I.A. 953 F.2d. 25, and Anastasoff v. United States, 223 F.3d 898 (8th Cir. 2000). In Haines: pro se litigants are held to less stringent pleading standards than bar licensed attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims. In Platsky: court errs if court dismisses the pro se litigant without instruction of how pleadings are deficient and instructions to repair pleadings. In Anastasoff: litigants' constitutional Rights are violated when courts depart from precedent where parties are similarly situated.

MOTION FOR ORDER TO RETURN PROPERTY

Elaine A. Brown and Edward L. Brown, husband and wife, Defendants herein, move this court under authority of the Constitution for the United States, Amendments II; IV; VI; IX, and X to ORDER THE GOVERNMENT TO RETURN PERSONAL PROPERTY of Defendants unlawfully taken from their home in an unlawful search and seizure absent a warrant as required by organic law. This motion embraces the individual Rights interpretation of the first ten amendments known as the "Bill of Rights" to the United States Constitution. According to settled law, the Second Amendment protects the citizen's Right to keep and bear arms, a Right now floundering between the Scylla of state police and militia powers and the Charybdis of federal regulation. This motion argues that any federal firearms confiscation and regulation is unconstitutional. Second Amendment Rights are sacred because of their connection to higher Rights and higher duties, which are the very substance of liberty and justice, and to the God that America has always acknowledged as the source of both. "That to secure these Rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,—That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it . ." The Declaration Of Independence, para. 2 (1776). The Defendants cannot tolerate the forced surrender and confiscation of their arms without surrendering their vision of human dignity under God which is our national soul. In support of this motion Elaine and Edward Brown instruct this court as follows in the attached memorandum:

MEMORANDUM AND FACTS

1. Elaine Brown and Edward Brown were arrested by armed U.S. Marshalls operating unlawfully outside of United States venue and brought under duress in chains into this court on May 24, 2006. Both Defendants were accused of numerous felony tax charges, yet neither Defendant was lawfully arraigned in front of a *federal judge* as required by Federal Rule 5(d), Criminal Procedure in a Felony Case. Edward and Elaine Brown have not been convicted of any crime or even alleged in this court to have committed any violent acts. Magistrate Judge Muirhead decreed that they be held in custody until all firearms were removed from their home. Arms have a special status under constitutional law. The U.S. Constitution does not delegate any such regulatory powers to anyone in the federal government. It is all together unlawful for a federal park commissioner acting as magistrate to deprive a person of the Right of self defense, based solely upon a sham proceeding in a de facto federal court, with no presumption of innocence, and no burden of proof since no finding of dangerousness is required. Every American has a fundamental Right to possess a firearm for self defense against an immediate threat, and surely law-abiding citizens, especially women do as well. Clearly, it was not the intent of Congress for a woman to lose her fundamental Right to armed self defense solely because of an illegitimate court decision with no evidence, no findings, and no burden of proof. It is unconstitutional to disable the Right to keep and bear arms without due process, except through a proceeding in which a de jure judicial officer is explicitly petitioned to disable them, the subject has an opportunity to argue to the contrary, the petitioner has the burden of proof that the subject if armed would be a threat to himself or others, and the court grants that petition. Merely being indicted of failure to

pay taxes is not sufficient justification to disable the Right to keep and bear arms, or set restrictions on such Right.

2. The court transcripts for both sham arraignment hearings evidence numerous violations of the Rights of the Defendants by Magistrate Muirhead, to include but not be limited to, Not providing the complaint and affidavit, Not reading the indictment to the defendants, Not allowing reasonable time to confer with qualified defense counsel, Not permitting the Defendants the Right to voice their own plea, and knowingly initiating the unlawful search and seizure of the Defendants home and private property. Magistrate Muirhead deliberately held both defendants in custody at their hearings on May 24, 2006 to obscure the fact that the Defendants' home was at that time being raided by federal agents operating unlawfully outside of federal venue and jurisdiction. There was no warrant signed by a lawful judicial officer authorizing this search and seizure while the defendants were being held in custody at the court house. The armed federal agents ordered remodeling construction workers at the Defendants' home to leave and then numerous federal agents began a systematic ransacking and pillaging of the home. The federal agents took video and still pictures of all areas of the house, garage and yard, made copies of books, documents, papers, computer files, and seized 30 private firearms and other personal property owned by Ed and Elaine Brown. There was no warrant or authorized judicial order for this raid and there was no inventory provided to the Brown's for the items removed from their home and taken to a retail store named Riley's Gun Shop. There was also a large box of many other small things that were seized, such as a flare gun, a non lethal pellet gun, a knife collection and a non firing revolver replica. The value of the small items comes to about \$15,000. Amendment IV to the United States Constitution specifically prohibits this unreasonable conduct by federal officers and

agents as follows: The Right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

3. Amendment II to the United States Constitution specifically prohibits this conduct by federal officers and agents as follows: A well regulated militia, being necessary to the security of a free state, the Right of the people to keep and bear arms, shall not be infringed. The New Hampshire Constitution at Article 2-guarantees to Ed and Elaine Brown: [The Bearing of Arms.]. All persons have the Right to keep and bear arms in defense of themselves, their families, their property and the state. The New Hampshire Constitution at Article 2 guarantees to Ed and Elaine Brown: [Natural Rights.] All men have certain natural, essential, and inherent Rights among which are, the enjoying and defending life and liberty; acquiring, possessing, and protecting, property; and, in a word, of seeking and obtaining happiness. Equality of Rights under the law shall not be denied or abridged by this state on account of race, creed, color, sex or national origin. Federal courts are required to follow state law when applicable and thus the New Hampshire Constitution is fully binding on this court and its rogue agents. In *Erie R. Co. v. Tompkins*, 304 US 64 (1938), the U.S. Supreme Court ruled that a federal court must follow state law rather than some kind of federal common law.

4. The Right of a citizen to bear arms, in the lawful defense of himself or the state, is thus absolute. He does not derive that Right from the state or federal government, but directly from the sovereignty as one of the people that framed the government. It is one of the "high powers" directly belonging to the citizen and "is excepted out of the general

powers of government." No law, or judicial grumbling, can be passed to infringe upon or impair it, because the Right is above the law, and independent of the law-making power.

The Second Amendment, like the First, Fourth, and Ninth Amendments, refers to a "Right of the people," not a Right of the states or a Right of the National Guard. The First Amendment guarantees the people's Right to assemble; the Fourth Amendment protects the people's Right to be free from unreasonable searches and seizures; the Ninth Amendment refers to the people's unenumerated Rights. These Rights are clearly individual -- they protect "the Right of the people" by protecting the Right of each person. This strongly suggests that the similarly-worded Second Amendment likewise secures an individual Right. The operative words are "the Right of the people to keep and bear Arms SHALL NOT be infringed." Let it be borne in mind that ALL of the first ten Articles of Amendment are of national effect, are declaratory and restrictive, superceding all contravening portions of the national and state constitutions.. Any and all laws, rules, regulations, proclamations, etc., Pro or Con, which may be entered in the record, addressing these freedoms are UNCONSTITUTIONAL and therefore NULLITIES. The Second Amendment stands as the Guarantor of All other Rights and of the Defense of the Constitution itself. The Right to keep and bear arms is not a Right conferred upon the people by the federal constitution. Whatever Rights . . . the people may have depend upon local legislation; the only function of the Second Amendment being to prevent the federal government and the federal government only from infringing that Right. Second Amendment Rights are sacred because of their connection to higher Rights and higher duties, which are the very substance of liberty and justice, and to the God that America has always acknowledged as the source of both. We cannot surrender our guns without surrendering the vision of human dignity under God which is our national soul. It can no longer be seriously disputed that the Second Amendment to the

United States Constitution codifies a fundamental -- many would say God-given -- individual Right to keep and bear arms, independent of and unrelated to any power of the States to create and maintain a military force, and independent of and unrelated to any power of the national government to regulate commerce.

5. The U.S. Supreme Court has previously noted, in *United States v. Lopez*, 2 F.3d 1342 (5th Cir. 1993), *aff'd*, 514 U.S. 549 (1995), that there may be serious Second Amendment issues created by federal gun control enactments unanchored by any constitutional authority. Moreover, the Supreme Court seems to have forecast this result. From as early as 1857 to as recently as 1990 the Court has recognized that the Right to keep and bear arms is a personal and individual Right of free citizens. See *Scott v. Sandford*, 60 U.S. (19 Howard) 398, 417, 450 (1857), and *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990). See also the concurring opinion of Justice Thomas in *Printz v. United States*, 521 U.S. ___, 117 S.Ct. 2365, 2385-2386 (1997). What the Second Amendment also does is recognize the Right, power, and duty of able-bodied persons (originally males, but now females also) to organize into militias and defend the state. It effectively recognizes that all citizens have military and police powers, and the "able-bodied" ones -- the militia -- also have military and police duties, whether exercised in an organized manner or individually in a crisis. It is a fundamental principal in law that the owners or managers of real property have the power to regulate who may enter their premises, and to set conditions upon their entry. Citizens have a Right to keep and bear arms --on their own property or property they control. In other words, citizens have a Right to keep and bear arms in those places and situations where they have a Right to be, unless such Rights are disabled by due process of law. The Second Amendment protects an individual Right, and two Supreme Court cases expressly held that the Second

Amendment was a restriction on the powers of the federal government See: *United States v. Cruikshank* [27] 92 U.S. 542, 553 (1875) (the Second Amendment Right "means no more than that it shall not be infringed by Congress. This is one of the amendments that has no other effect than to restrict the national government . . .") and *Presser v. Illinois*, 116 U.S. 252, 267 (1886) (rejecting claim that Second Amendment invalidated an Illinois statute"). In light of the compelling historical and textual indicia supporting the individual Right interpretation, the performance of the federal judiciary in construing the Second Amendment is disappointing. Unless and until the Supreme Court revisits and clarifies the meaning of the Second Amendment, portions of the federal judiciary will likely continue to legislate from the bench. Regardless of who or what asserts it, the Second Amendment loses none of its prohibitory power as against the federal government. To hold otherwise would constitute nothing less than a judicial repeal of the Second Amendment. The Supreme Court's recent decision in *United States v. Lopez* casts doubt on the constitutionality of federal regulation of the mere possession of firearms. 115 S. Ct. 1624 (1995). Some excellent research and scholarship has recently emerged showing that the Second Amendment protects an individual Right, including: Don B. Kates, Jr., *Handgun Prohibition and the Original Meaning of the Second Amendment*, 82 MICH. L. REV. 204 (1983); Sanford Levinson, *The Embarrassing Second Amendment*, 99 YALE L.J. 637 (1989); Jay R. Wagner, *Gun Control Legislation and the Intent of the Second Amendment: To What Extent Is There an Individual Right To Keep and Bear Arms?*, 37 VILL. L. REV. 1407 (1992); Robert Dowlut, *Federal and State Constitutional Guarantees to Arms*, 15 U. DAYTON L. REV. 59 (1989); Nelson Lund, *The Second Amendment, Political Liberty, and the Right to Self-Preservation*, 39 ALA. L. REV. 103 (1987); Nicholas J. Johnson, *Beyond the Second Amendment: An Individual Right to Arms Viewed Through the Ninth Amendment*, 24 RUTGERS L.J. 1

(1992); Thomas M. Moncure, *The Second Amendment Ain't About Hunting*, 34 *HOW. L.J.* 589 (1991).

6. Many state constitutions acknowledge an individual Right of their citizens to keep and bear arms. Five of the states that ratified the Constitution also sent demands for a Bill of Rights to Congress. All these demands included a Right to keep and bear arms. Here, in relevant part, is the New Hampshire text: Twelfth - Congress shall never disarm any Citizen unless such as are or have been in Actual Rebellion. Under the state's Right view, states must by definition be free to control and maintain their militia without federal interference. States determine how their militias will be commanded and who will comprise their membership. Under their inherent police powers, states also determine which weapons may or may not be possessed and whether members of the militia will be subject to such regulation. States thus can assert their Second Amendment Rights to challenge any federal law which hinders the ability of state militia members to be armed with weapons which are reasonably related to the efficiency or preservation of the state militia. The First Circuit in *Cases* recognized that the federal government may not infringe upon Rights conferred to citizens by states. *Cases v. United States*, 131 F.2d 916, 921-22 (1st Cir. 1942), cert. denied, 319 U.S. 770 (1943) (Second Amendment not a conferral of Rights but a bar to Congressional infringement of state conferred Rights). See discussion of the *Cases* decision, *supra*. States can provide freedoms and Rights which surpass those found in the federal Constitution. See, e.g., William J. Brennan, Jr., *The Bill of Rights and the States: The Revival of State Constitutions as Guardians of Individual Rights*, 61 *N.Y.U. L. REV.* 535, 548 (1986) ("As is well known, federal preservation of civil liberties is a minimum, which the states may surpass so long as there is no clash with federal law."). Whether a state's Right to keep and bear arms provision

clashes with federal law depends upon how the courts interpret the militia utility inquiry of the Second Amendment. The Constitution is, after all, the ultimate federal law. This prohibition upon the federal government means that it can never interfere with the people who make the militia of the States; and that therefore the States will always have the means to check by physical force any usurpation of authority not given to the Nation by the Constitution. Assuming *arguendo* the purpose of the Second Amendment is to protect the Right of states to maintain militias without federal interference, it follows that any federal regulation which prohibits ownership of weapons that would otherwise be legal under state laws is unconstitutional. It may be supposed from the phraseology of this provision that the Right to keep and bear arms was only guaranteed to the militia; but this would be an interpretation not warranted by intent. The militia, as has been elsewhere explained, consists of those persons who, under the law, are liable to the performance of military duty, and are officered and enrolled for service when called upon. But the law may make provision for the enrollment of all who are fit to perform military duty, or of a small number only, or it may wholly omit to make any provision at all Thomas Cooley, *The General Principles Of Constitutional Law In The United States Of America* 289-99 (3d Ed. 1898). The Federal and State constitutions therefore provide that the Right of the people to bear arms shall not be infringed. The meaning of the provision undoubtedly is that the people from whom the militia must be taken shall have the Right to keep and bear arms, and they need no permission or regulation of law for the purpose. *Valley Forge Christian College v. Americans United*, 454 U.S. 464, 484 (1982).

CONCLUSION

Wherefore, The Defendants, Edward and Elaine Brown have shown herein that this court has acted in notorious violation of the federal and state constitutions to disable their Rights The defendants demand that this court issue an ORDER to RETURN ALL THEIR PERSONAL PROPERTY SEIZED FROM THEM BY FEDERAL AGENTS ON MAY 24 2006. This court has a non-discretionary duty to grant this motion and (1) Order the return of all their personal property including all self defense firearms; (2) Enjoin the United States from any further harassment of Elaine Brown and Edward Brown; (3) Stay all further proceedings until such time as the United States Magistrate and the United States Attorney learn, comprehend, and comply with the organic law.

ORAL ARGUMENT DEMANDED

Date October 14, 2006

Prepared and submitted by:

Elaine A. Brown
Elaine A. Brown
c/o 401 Center of Town Road
Plainfield, New Hampshire

Edward L. Brown
Edward L. Brown
c/o 401 Center of Town Road
Plainfield, New Hampshire

CERTIFICATE OF SERVICE

I, **Edward L. Brown**, certify that I delivered via postage paid First Class U.S. Mail Return Receipt, a true and correct copy of the above and foregoing **NOTICE AND MOTION** to the office of the Clerk of Court U.S. District Court, District of New Hampshire, at 55 Pleasant St., Concord, NH 03301-0001 for entry into the record and to William E. Morse in the office of THOMAS P. COLANTUONO, the United States Attorney for the District of (NH) located at 53 Pleasant St. Concord, NH 03301-0001.

Date October 14, 2006

Edward L. Brown

Edward L. Brown

James R. Starr, Clerk
Clerk's Office
Warren B. Rudman U.S. Courthouse
55 Pleasant Street, Room 110
Concord, NH 03301-3941.

U.S. DISTRICT COURT
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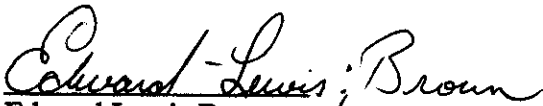
Via Certified Mail
7006 0810 0002 7165 6670

Re: 01:06-cr-00071-SM UNITED STATES OF AMERICA v. Elaine Brown; Ed Brown

Dear Mr. Starr:

Please timely file the enclosed Defendants' motion into the above captioned case file and make a suitable docket entry. I have already mailed a true copy of the enclosed motion to the United States Attorneys office.

With all due respect,


Edward Lewis Brown
c/o 401 Center of Town Road
Plainfield, New Hampshire