

to remain impartial, after hearing all of this evidence and possibly suppressing some of it, when determining whether or not the government has proven its case beyond a reasonable doubt. Counsel would request, that if this matter proceeds to trial, that this Court empanel a jury to be the fact finder and to make the ultimate determination of whether the government has proven its case beyond a reasonable doubt. Counsel would certainly request a 12 member jury, but it appears that a 6 member jury would be sufficient.

ARGUMENT

The Arizona Constitution, Article 2 section 23 states: "The right of trial by jury shall remain inviolate...In all other cases, the number of jurors not less than six, and the number required to render a verdict, shall be specified by law." The Arizona Constitution does not disallow jury trials for juveniles, rather that decision is within the discretion of the trial court. From the reading of the Arizona Constitution it would appear that all criminal proceedings require a jury trial. Counsel is aware the right to a jury trial in most misdemeanor cases has been abolished; however individual adults charged with premeditated murder are still entitled to a jury trial. Counsel also understands that a delinquency proceeding is not a criminal matter; however the Arizona Constitution authorizes a jury trial for "all other cases." This is one of those cases where this Court could and should empanel a jury to decide the merits of the case.

The Arizona Constitution, Article 2 section 13 states "No law shall be enacted granting to any citizen, class of citizens . privileges or immunities which upon the same terms, shall not equally belong to all citizens..." Black's Law Dictionary, West New Pocket ed. (1996), defines citizen as, "A person who, by either birth or naturalization, is a

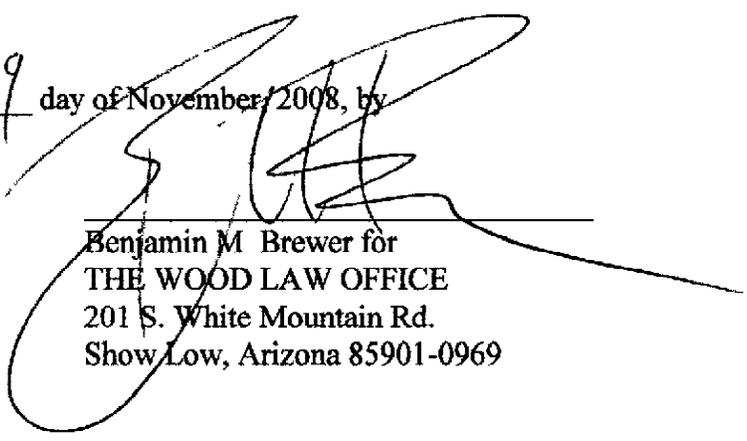
member of a political community, owing allegiance and being entitled to enjoy all the civil rights and protections of the community.” Id

Christian was born in the United States and is therefore a citizen of this country. In addition, he is presently and has resided in Apache County, Arizona and is thus also a citizen of Arizona. Christian is therefore subject to the jurisdiction of Arizona, as is evident by his current incarceration, and is also entitled to all the privileges and immunities granted to all other citizens, one of those being the right to a jury trial. Christian is not asking to consume alcohol or drive a vehicle, both of which require one attain a specific age before engaging in said activities, but rather simply enjoy the same use of the 4th branch of government, that being the impartial jury, to determine whether the government has proven its case or not.

The Arizona Constitution, Article 2 section 24 states “In criminal prosecutions, the accused shall have the right...to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed...” Counsel is not asserting this is a criminal prosecution against Christian, however the offense is certainly a crime under Arizona law and if convicted could require the detention of Christian in the Juvenile Department of Corrections until his 18th birthday.

If the government timely objects in writing a hearing is requested, otherwise it is requested that the Court set this matter for a jury trial and empanel twelve (12) jurors to hear the merits of this case.

Respectfully Submitted this 19 day of November, 2008, by



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Copies mailed this 19 day of
November, 2008, to:
Judge Roca
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Client