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May 19, 2016

The Hon. Lyle W. Cace
Clerk, United States Court of Appeals
for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130

Re: *Mance v. Lynch*, No. 15-10311
(Oral argument held Jan. 6, 2016, before Judges Prado, Owen, and Haynes)

Plaintiffs filed as supplemental authority the Ninth Circuit's recent decision in *Teixeira v. County of Alameda*, No. 13-17132 (9th Cir. May 16, 2016). This decision illustrates why plaintiffs cannot succeed at step two of this Court's analysis.

Teixeira confirms that intermediate scrutiny—not strict scrutiny—is the proper standard of review in this case. The Ninth Circuit explained that intermediate scrutiny applies to regulations of “the *manner* in which persons may exercise their Second Amendment rights,” analogizing to the First Amendment context, where intermediate scrutiny applies to “content-neutral speech restriction[s] that regulate[] only the time, place, or manner of speech.” Op. 26. The court explained that a local ordinance that merely regulates the location of gun stores, as opposed to banning stores, is subject to intermediate scrutiny. *Id.* Under the Ninth Circuit's reasoning, intermediate scrutiny applies to the in-state sales requirements at issue in this case because those requirements merely specify the manner in which an individual may purchase an out-of-state firearm. Reply Br. 17; *see also* Gov't Br. 22-28; Reply Br. 9-18. The challenged laws ensure that in-state dealers finalize the sale of out-of-state handguns; the laws do not ban sales.

Moreover, intermediate scrutiny is appropriate because the in-state sales requirements “do[] not substantially prevent law-abiding citizens from using firearms

to defend themselves in the home.” Op. 26. The requirements impose an even lesser burden than the local ordinance in *Teixeira*, because they do not affect in-state sales.

In *Teixeira*, the county failed to show that gun stores increase crime in the area. Op. 31-32. Here, by contrast, there is a clear link between out-of-state firearms sales and handgun trafficking, and the government demonstrated that in-state dealers can help ensure the legality of the sale of out-of-state firearms. Gov’t Br. 30-37; Reply Br. 18-24.

In addition, *Teixeira* confirms that plaintiffs’ equal-protection challenge is meritless. *See* Gov’t Br. 38-41; Reply Br. 25-27. As the Ninth Circuit explained, when a claim is “no more than a [Second] Amendment claim dressed in equal protection clothing, it is subsumed by, and coextensive with” the merits of a Second Amendment claim. Op. 11.

Sincerely,

s/ *Tara S. Morrissey*

TARA S. MORRISSEY
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CERTIFICATE OF COMPLIANCE

This letter complies with the word count limitation of Fed. R. App. 28(j), as its body contains 350 words as automatically totaled by Microsoft Word.

s/ Tara S. Morrissey
TARA S. MORRISSEY

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2016, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Tara S. Morrissey
TARA S. MORRISSEY