

1 OFFICE OF THE ATTORNEY GENERAL
Edward Manibusan
2 Attorney General
James M. Zarones (T0102)
3 Assistant Attorney General
Hon Juan A. Sablan Mem. Bldg., 2nd Floor
4 Saipan, MP 96950-8907
Tel: (670)-664-9023
5 Fax: (670)-664-2349
e-mail: jzarones@dps.gov.mp
6 Attorney for Defendant Commonwealth

7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE**
9 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

10 LI-RONG RADICH AND
DAVID RADICH,

11 Plaintiffs,

12 v.

13 JAMES C. DELEON GUERRERO, in his
official capacity as Commissioner of the
14 Department of Public Safety of the
Commonwealth of the Northern Mariana
15 Islands,

16 Defendant.

Civil Action No. 14-0020

**OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT**

17 **NOW INTO COURT**, through undersigned counsel comes Defendant James C. Deleon
18 Guerrero, in his official capacity as Commissioner of the Department of Public Safety for the
19 Commonwealth of the Northern Mariana Islands, and hereby opposes the Plaintiffs' Motion for
20 Summary Judgment filed on January 10, 2015. The legal basis for the Defendant's Opposition is
21 more fully set forth in the Memorandum which is filed contemporaneously with this Opposition.
22

23 RESPECTFULLY
24 SUBMITTED.

OFFICE OF THE ATTORNEY GENERAL

25 DATED: February 9, 2015

26 /s/
James Zarones (T0102)
Assistant Attorney General
27 Attorney for Defendant
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing was electronically filed on February 9, 2015, with service requested to all parties of record.

/s/
James Zarones, Bar No. T0102
Assistant Attorney General
Office of the Attorney General
Counsel for Department of Public Safety
Commonwealth of the
Northern Mariana Islands

1 OFFICE OF THE ATTORNEY GENERAL
Edward Manibusan
2 Attorney General
James M. Zarones (T0102)
3 Assistant Attorney General
Hon Juan A. Sablan Mem. Bldg., 2nd Floor
4 Saipan, MP 96950-8907
Tel: (670)-664-9023
5 Fax: (670)-664-2349
e-mail: jzarones@dps.gov.mp
6 Attorney for Defendant Commonwealth

7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE**
9 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

9 **LI-RONG RADICH AND**
10 **DAVID RADICH,**

11 **Plaintiffs,**

12 **v.**

12 **JAMES C. DELEON GUERRERO, in his**
13 **official capacity as Commissioner of the**
14 **Department of Public Safety of the**
15 **Commonwealth of the Northern Mariana**
16 **Islands,**

17 **Defendant.**

Civil Action No. 14-0020

MEMORANDUM IN SUPPORT OF
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION 1

II. LEGAL STANDARD..... 2

III. EVIDENTIARY OBJECTIONS..... 2

IV. THE COURT SHOULD DISMISS PLAINTIFFS’ COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION 4

A. THE COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION OVER COUNT I OF THE COMPLAINT BECAUSE HANDGUNS CANNOT BE LEGALLY IMPORTED INTO THE COMMONWEALTH 6

B. THE COURT DOES NOT HAVE JURISDICTION OVER PLAINTIFFS’ CLAIMS BECAUSE THEY HAVE NOT DEMONSTRATED THAT THEY ARE ENTITLED TO WEAPON IDENTIFICATION CARDS 8

C. THE COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION OVER THE CLAIMS BROUGHT BY LI-RONG RADICH BECAUSE SHE IS NOT ENTITLED TO POSSESS FIREARMS IN THE COMMONWEALTH 10

D. THE COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION OVER PLAINTIFFS’ CLAIMS BECAUSE THE PLAINTIFFS HAVE NOT ATTENDED AND COMPLETED THE FIREARM SAFETY CLASS REQUIRED BY LAW ... 11

E. CONCLUSION 12

V. THE HELLER-MCDONALD CONSTRUCTION OF THE SECOND AMENDMENT IS NOT APPLICABLE TO THE COMMONWEALTH BECAUSE IT DIRECTLY CONTRADICTS THE INTENT OF THE FRAMERS OF THE COVENANT 12

VI. COUNT I 20

A. THE SECOND AMENDMENT DOES NOT PROTECT THE RIGHT TO POSSESS HANDGUNS IN THE COMMONWEALTH 20

VII. CONCLUSION 24

1	Cases	
2	<i>Brown v. General Services Administration</i> , 425 U.S. 820, 828 (1976).....	19
3	<i>Catholic League for Religious & Civil Rights v. City & Cnty. of San Francisco</i> ,	
4	624 F.3d 1043, 1053 (9th Cir. 2010)	5, 6, 9, 11
5	<i>Celotex Corp. v. Catreit</i> , 477 U.S. 317, 323 (1986)	2, 9
6	<i>City of Los Angeles v. Lyons</i> , 461 U.S. 95, 101 (1983)	4
7	<i>Confederated Tribes & Bands of Yakama Indian Nation v. Locke</i> , 176 F.3d 467,	
8	469 (9th Cir. 1999).....	7
9	<i>D.C. v. Heller</i> , 554 U.S. 603, 628-629 (2008).....	20, 21, 22, 23
10	<i>Ex parte Young</i> , 209 U.S. 123, 157 (1908).....	7
11	<i>FW/PBS, Inc. v. Dallas</i> , 493 U.S. 215, 231 (1990)	4
12	<i>Get Outdoors II, LLC v. City of San Diego, Cal.</i> , 506 F.3d 886, 891 (9th Cir.	
13	2007)	4
14	<i>Great Northern Ry. Co. v. Sunburst Oil & Refining Co.</i> , 287 U.S. 358, 365 (1932)	14
15	<i>Hill v. Equitable Trust Co.</i> , 851 F.2d 691, 695-96 (3rd Cir. 1988)	14
16	<i>Los Angeles Cnty. Bar Ass'n v. Eu</i> , 979 F.2d 697, 704 (9th Cir. 1992).....	7
17	<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555, 560-61 (1992)	4, 5, 9
18	<i>Nissan Fire & Marine Ins. Co. v. Fritz Companies, Inc.</i> , 210 F.3d 1099, 1102-03	
19	(9th Cir. 2000).....	2, 9
20	<i>Nuclear Info. & Res. Serv. v. Nuclear Regulatory Comm'n.</i> , 457 F.3d 941, 955	
21	(9th Cir. 2006).....	5, 11
22	<i>Orr v. Bank of Am., NT & SA</i> , 285 F.3d 764, 773 (9th Cir. 2002).....	3
23	<i>Pepper & Tanner, Inc. v. Shamrock Broad., Inc.</i> , 563 F.2d 391, 395 (9th Cir.	
24	1977)	2
25	<i>Presser v. Illinois</i> , 116 U.S. 252, 265 (1886)	14
26	<i>Renne v. Geary</i> , 501 U.S. 312, 319 (1991).....	5
27	<i>Silveira v. Lockyer</i> , 312 F.3d 1052, 1060-66 (9th Cir. 2002).....	14
28	<i>Snoeck v. Brussa</i> , 153 F.3d 984, 986 (9th Cir. 1998)	7
29	<i>Steel Co. v. Citizens for a Better Env't</i> , 523 U.S. 83, 103-04 (1998).....	4
30	<i>Stevens v. United States</i> , 440 F.2d 144, 149 (6th Cir. 1971)	13
31	<i>United States v. Emerson</i> , 270 F.3d 203 (5th Cir. 2001)	14
32	<i>United States v. Johnson</i> , 497 F.2d 548, 550 (4th Cir. 1974).....	13
33	<i>United States v. Miller</i> , 307 U.S. 174 (1939).....	14
34	<i>Valley Forge Christian College v. Americans United For Separation of Church</i>	
35	<i>and State</i> , 454 U.S. 464, 472 (1982).....	5
36	<i>Zicherman v. Korean Air Lines Co., Ltd.</i> , 516 U.S. 217, 226 (1996).....	16
37	Statutes	
38	1 CMC § 2553(i).....	6, 7
39	28 U.S.C. § 1746.....	4
40		

1	48 U.S.C. § 1806.....	10
2	6 CMC § 2204.....	10
3	6 CMC § 2204(a).....	9
4	6 CMC § 2204(d).....	9, 11, 12
5	6 CMC § 2204(l).....	10, 11
6	6 CMC § 2205(a).....	9
7	6 CMC § 2301(a)(3).....	6
8	6 CMC § 2301(b).....	6
9	6 CMC § 2303(a).....	6
10	6 CMC §§ 2204(f)(1)-(6).....	9
11	6 CMC §§ 2222(e).....	6, 22
12	6 CMC §§ 2222(e).....	7, 8
13	6 CMC §§ 2301-2303.....	1, 6, 7
14	6 CMC §§ 2301-2306.....	8
15	63 TTC § 551.....	22
16	Public Law 17-1 § 5(c).....	10
17	Public Law 7-38.....	10
18	TT PL 4C-13 § 1.....	22
19	<u>Other Authorities</u>	
20	Gary Kleck & Marc Gertz, <i>Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with A Gun</i> , 86 J. Crim. L. & Criminology 150, 160 (1995).....	22
21	Willens & Siemer, <i>An Honorable Accord</i> (2002).....	16
22	Willens & Siemer, <i>The Constitution of the Northern Mariana Islands: Constitutional Principles and Innovation In a Pacific Setting</i> , 65 Georgetown L.J. 1373, 1585-86 (1977).....	16
23	<u>Rules</u>	
24	Fed. R. Civ. P. 12(h)(3).....	12
25	Fed. R. Civ. P. 56(a).....	2
26	Fed. R. Civ. P. 56(c)(2).....	2
27	Fed. R. Civ. P. 56(e).....	3, 5
28	Fed. R. Civ. P. 56(f)(1).....	24
	Fed. R. Evid. 401.....	3
	Fed. R. Evid. 602.....	3
	Fed. R. Evid. 901(a).....	3
	<u>Constitutional Provisions</u>	
	Covenant § 102.....	13
	Covenant § 103.....	18
	Covenant § 203(c).....	18

1	Covenant § 501	15
2	Covenant § 501(a).....	13, 18
3	NMI Const. Trans'l Matters § 2.....	22
4	<u>Secondary Sources</u>	
5	NMIAC § 70-10.1-020.....	6, 7

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **I. INTRODUCTION**

2 The Plaintiffs do not have standing to challenge the Weapons Control Act because a
3 favorable decision by the Court would not redress their alleged injuries. First, the Plaintiffs have
4 not challenged the constitutionality of 6 CMC §§ 2301-2303, which prohibits the importation of
5 handguns into the Commonwealth. Second, the Plaintiffs have not established that they are
6 entitled to an identification card issued pursuant to the Weapons Control Act. Third, the
7 Plaintiffs have not attended and successfully completed the Mandatory Firearm Safety Class
8 which is required by law prior to the issuance of an identification card. Finally, Li-Rong Radich
9 is not entitled to an identification card because she is not a citizen or national of the United
10 States.
11

12 If the Court finds that the Plaintiffs have standing to challenge the Weapons Control Act,
13 then the Court should hold, that where a subsequent interpretation of a constitutional right is
14 directly contrary to the known understanding of the framers of the Covenant, it may not be
15 enforced against the Commonwealth, based on the fundamental principle that the intent of the
16 framers is paramount when interpreting the Covenant. Here, Plaintiffs seek to impose upon the
17 Commonwealth an interpretation of the Second Amendment which is directly contrary to the
18 intent of the framers of the Covenant. Wherefore, the Defendant opposes Plaintiffs' Motion for
19 Summary judgment as to all Counts.
20
21

22 If the Court finds that the Plaintiffs have standing to challenge the Weapons Control Act,
23 then the Defendant opposes the Plaintiffs' motion for summary judgment as to Count I because
24 handguns do not enjoy Second Amendment protection in the Commonwealth. Handguns are not
25 constitutionally protected in the Commonwealth because they have never been used by law
26 abiding citizens for the purpose of self-defense.
27

28 The Defendant will not address Count III of the motion for summary judgment because it

1 has been withdrawn by Plaintiff David Radich.

2 **II. LEGAL STANDARD**

3 Summary judgment should not be rendered unless “the movant shows that there is no
4 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of
5 law.” Fed. R. Civ. P. 56(a). The moving party must identify the pleadings, depositions,
6 affidavits, or other evidence that it “believes demonstrates the absence of a genuine issue of
7 material fact.” *Celotex Corp. v. Catreit*, 477 U.S. 317, 323 (1986). “The burden of establishing
8 the nonexistence of a ‘genuine issue’ is on the party moving for summary judgment.” *Id.* at 330.
9 (citations omitted). “This burden has two distinct components: an initial burden of production,
10 which shifts to the nonmoving party if satisfied by the moving party; and an ultimate burden of
11 persuasion, which always remains on the moving party.” *Id.* If the movant fails to discharge his
12 initial burden of production, then the Court is not required to determine whether the movant has
13 satisfied his burden of persuasion.” *Id.* Further, “[i]f a moving party fails to carry its initial
14 burden of production, the nonmoving party has no obligation to produce anything, even if the
15 nonmoving party would have the ultimate burden of persuasion at trial.” *Nissan Fire & Marine*
16 *Ins. Co. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1102-03 (9th Cir. 2000). “While suitable
17 inferences may be drawn by the trial court in ruling on a motion for summary judgment, all such
18 inferences are to be drawn against the moving party.” *Pepper & Tanner, Inc. v. Shamrock*
19 *Broad., Inc.*, 563 F.2d 391, 395 (9th Cir. 1977).

22 **III. EVIDENTIARY OBJECTIONS**

23 Defendant makes the following evidentiary objections, pursuant to Fed. R. Civ. P.
24 56(c)(2), to the declarations filed by Li-Rong Radich, David Radich, and certain exhibits offered
25 by Plaintiffs in support of their motion for summary judgment.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EVIDENCE OBJECTED TO	GROUND FOR OBJECTION
Sample Application for Weapon Identification Card	The Plaintiffs have not authenticated the document. "Authentication is a 'condition precedent to admissibility,' and this condition is satisfied by 'evidence sufficient to support a finding that the matter in question is what its proponent claims.' Fed. R. Evid. 901(a). We have repeatedly held that unauthenticated documents cannot be considered in a motion for summary judgment." <i>Orr v. Bank of Am., NT & SA</i> , 285 F.3d 764, 773 (9th Cir. 2002). "In a summary judgment motion, documents authenticated through personal knowledge must be "attached to an affidavit that meets the requirements of [Fed. R. Civ. P.] 56(e) and the affiant must be a person through whom the exhibits could be admitted into evidence." <i>Id.</i> at 773-774.
Screenshot of Website	Same objection as above.
Declaration of David Radich ¶ 7	Relevance. The Plaintiff cannot establish that the Attorney General's review of a firearm application, prior to the sixty day time limitation, has a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without evidence." Fed. R. Evid. 401.
Declaration of David Radich ¶ 7	Personal knowledge. The Defendant cannot testify as to whether or not the Office of the Attorney General reviewed his application for a Weapon Identification Card because he has no personal knowledge. An unnamed individual on a telephone call informing him of such is not sufficient. <i>See</i> Fed. R. Evid. 602.
Declaration of David Radich ¶ 9	Legal conclusion. The Plaintiff is not asserting a fact. He is asserting a legal conclusion.
Declaration of Li-Rong Radich ¶ 8	Legal conclusion. The Plaintiff is not asserting a fact. She is asserting a legal conclusion.

1 Declaration of David Radich and Li-Rong
2 Radich

Both declarations fail to comply with 28 U.S.C. § 1746 and LR 7.1(b). Specifically, both declarations use grammatically unsound language which omits the word penalty. The language used in the declarations does not substantially comply with 28 U.S.C. § 1746 or LR 7.1(b) because the language does not convey to the declarant that there is a penalty for committing perjury. Therefore, the Court should sustain Defendant’s objection and strike the declarations filed by the Plaintiffs.

8
9 **IV. THE COURT SHOULD DISMISS PLAINTIFFS’ COMPLAINT FOR LACK OF**
10 **SUBJECT MATTER JURISDICTION**

11 “[T]hose who seek to invoke the jurisdiction of the federal courts must satisfy the
12 threshold requirement imposed by Article III of the Constitution by alleging an actual case or
13 controversy.” *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983). To establish standing under
14 Article III of the Constitution the Plaintiff must demonstrate “1) an injury in fact which is
15 ‘actual, concrete, and particularized’; 2) a causal connection between that injury and the
16 defendant's conduct; and 3) a likelihood that the injury can be redressed by a favorable decision
17 of the court.” *Get Outdoors II, LLC v. City of San Diego*, Cal., 506 F.3d 886, 891 (9th Cir. 2007)
18 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). “This triad of injury in
19 fact, causation, and redressability constitutes the core of Article III's case-or-controversy
20 requirement, and the party invoking federal jurisdiction bears the burden of establishing its
21 existence.” *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103-04 (1998) (citing *FW/PBS,*
22 *Inc. v. Dallas*, 493 U.S. 215, 231 (1990)). “[E]ach element must be supported in the same way as
23 any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and
24 degree of evidence required at the successive stages of the litigation.” *Lujan*, 504 U.S. at 561
25 (citations omitted). “In response to a summary judgment motion . . . the plaintiff . . . must ‘set
26
27
28

1 forth' by affidavit or other evidence 'specific facts,' which for purposes of the summary
2 judgment motion will be taken to be true." *Id.* (quoting Fed. R. Civ. P. 56(e)).

3 To establish redressability, the Plaintiffs must demonstrate that it is "likely, as opposed to
4 merely speculative, that the injury will be redressed by a favorable decision." *Catholic League*
5 *for Religious & Civil Rights v. City & Cnty. of San Francisco*, 624 F.3d 1043, 1053 (9th Cir.
6 2010) (quoting *Lujan* at 561). The redressability requirement ensures that the Court's resources
7 are not wasted on fruitless academic arguments, but instead "that the legal questions presented to
8 the court will be resolved. . . in a concrete factual context conducive to a realistic appreciation of
9 the consequences of judicial action." *Valley Forge Christian College v. Americans United For*
10 *Separation of Church and State*, 454 U.S. 464, 472 (1982). In other words, redressability
11 "depends on whether the court has the ability to remedy the alleged harm." *Nuclear Info. & Res.*
12 *Serv. v. Nuclear Regulatory Comm'n.*, 457 F.3d 941, 955 (9th Cir. 2006).

13
14
15 In *Renne v. Geary* the Supreme Court expressed serious doubt as to whether the Plaintiff
16 had standing to sue, because a separate unchallenged California statute prohibited the conduct
17 which the Plaintiffs wished to engage in. *Renne v. Geary*, 501 U.S. 312, 319 (1991). Similarly, in
18 *Nuclear Information and Resources Services* the Ninth Circuit Court of Appeals held that the
19 Plaintiff could not establish redressability when a separate statute or regulation, not before the
20 Court, prohibited the conduct that the Plaintiff wished to engage in. *Nuclear Info. & Res. Serv.*,
21 457 F.3d at 955.

22
23 The Court may not exercise subject matter jurisdiction over Plaintiffs claims because a
24 favorable decision by this Court will not redress the Plaintiffs' alleged injuries. Wherefore, the
25 Court should dismiss Plaintiffs' claims for lack of subject matter jurisdiction.

1 **A. THE COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION OVER**
2 **COUNT I OF THE COMPLAINT BECAUSE HANDGUNS CANNOT BE**
3 **LEGALLY IMPORTED INTO THE COMMONWEALTH**

4 The Court cannot exercise subject matter jurisdiction over Count I of the Plaintiffs’
5 Complaint because a favorable decision by the Court will not redress the Plaintiffs’ alleged
6 injuries. The Division of Customs is charged with the enforcement of the Commonwealth’s
7 customs laws. 1 CMC § 2553(i); NMIAC § 70-10.1-020 (“The Customs Service Division of the
8 Commonwealth of the Northern Mariana Islands shall . . . intercept illicit imports of narcotics,
9 non-registered weapons, and other contraband at the ports of entry.”) Commonwealth law
10 classifies handguns as contraband and prohibits their importation. 6 CMC §§ 2222(e),
11 2301(a)(3). Any person that unlawfully imports a handgun into the Commonwealth will be
12 punished by imprisonment for not more than five years, a \$2000 fine, or both. 6 CMC § 2301(b).
13 The Customs Service will arrest any person and seize any handgun found to be in violation of the
14 6 CMC § 2301(a)(3). Further, any handgun imported into the Commonwealth will be subject to
15 the forfeiture law of the Commonwealth. 6 CMC § 2303(a). To establish redressability, the
16 Plaintiffs must demonstrate that it is “likely, as opposed to merely speculative, that the injury
17 will be redressed by a favorable decision.” *Catholic League for Religious & Civil Rights*, 624
18 F.3d at 1053 (quoting *Lujan*, 504 U.S. at 561). A favorable decision by this Court will not
19 redress Plaintiffs’ injuries complained of in Count I of the Complaint because the importation of
20 handguns is and will remain prohibited by a Commonwealth law which the Plaintiffs have not
21 challenged. If the Plaintiffs acquire handguns, then they will be subject to arrest, prosecution,
22 and forfeiture of said handguns under 6 CMC §§ 2301-2303. Therefore, a favorable ruling by
23 this Court will not redress Plaintiffs’ alleged injuries. As such, the Court must dismiss Count I
24 for lack of subject matter jurisdiction.
25
26
27
28

1 1. EVEN IF PLAINTIFFS HAD CHALLENGED 6 CMC § 2301-2303 THE COURT
2 WOULD NOT HAVE THE AUTHORITY TO ISSUE AN INJUNCTION
3 PROHIBITING THE ENFORCEMENT OF THE COMMONWEALTH’S
4 CONTRABAND LAWS

5 The Defendant, James C. Deleon Guerrero, does not have a duty to enforce the law
6 prohibiting the importation of contraband codified at 6 CMC §§ 2222(e), 2301-2303. In *Ex parte*
7 *Young* the Supreme Court held that the Eleventh Amendment does not bar an action against a
8 state officer to restrain unconstitutional conduct on his part under color of state law. *Ex parte*
9 *Young*, 209 U.S. 123, 157 (1908). “In making an officer of the state a party defendant in a suit to
10 enjoin the enforcement of an act alleged to be unconstitutional, it is plain that such officer must
11 have some connection with the enforcement of the act, or else it is merely making him a party as
12 a representative of the state, and thereby attempting to make the state a party. *Ex parte Young*,
13 209 U.S. 123, 157 (1908); *see also Confederated Tribes & Bands of Yakama Indian Nation v.*
14 *Locke*, 176 F.3d 467, 469 (9th Cir. 1999) (“Because the governor lacks the requisite connection
15 to the activity sought to be enjoined, he serves ‘merely ... as a representative of the state,’ and the
16 Tribe is ‘thereby attempting to make the state a party.’”) “This connection must be fairly direct; a
17 generalized duty to enforce state law or general supervisory power over the persons responsible
18 for enforcing the challenged provision will not subject an official to suit.” *Los Angeles Cnty. Bar*
19 *Ass'n v. Eu*, 979 F.2d 697, 704 (9th Cir. 1992). The connection “must be determined under state
20 law depending on whether and under what circumstances a particular defendant has a connection
21 with the challenged state law.” *Snoeck v. Brussa*, 153 F.3d 984, 986 (9th Cir. 1998).

22 Here, Commonwealth law assigns the enforcement of 6 CMC §§ 2222(e), 2301-2306 to
23 the Customs Service. 1 CMC § 2553(i); NMIAC § 70-10.1-020. The Defendant, James C.
24 Deleon Guerrero, is not the chief executive officer of the Customs Service or the Department of
25
26
27
28

1 Finance. Ex. 1 ¶ 2-3. Instead, James C. Deleon Guerrero is the Commissioner for the Department
2 of Public Safety. Ex. 1 ¶ 1. As such, James C. Deleon Guerrero does not have the requisite
3 connection with the enforcement of 6 CMC §§ 2222(e), 2301-2306. The Court cannot issue an
4 injunction in the absence of the requisite connection because doing so would make the
5 Commonwealth itself a party, which is not permitted under *Ex parte Young*. Therefore, even if
6 the Plaintiffs had challenged 6 CMC §§ 2301-2306, the Court would be unable to issue an
7 injunction against its enforcement because James C. Deleon Guerrero does not have a direct
8 connection to the challenged provision. Accordingly, this Court does not have the authority to
9 issue an injunction against the unchallenged importation prohibitions contained in 6 CMC
10 §§ 2222(e), 2301-2306. The Court cannot redress the Plaintiffs' alleged injuries because the
11 Court cannot issue an injunction against the enforcement of 6 CMC §§ 2222(e), 2301-2306.
12 Therefore, the Court should dismiss Plaintiffs' Complaint for lack of subject matter jurisdiction.
13
14

15 **B. THE COURT DOES NOT HAVE JURISDICTION OVER PLAINTIFFS' CLAIMS**
16 **BECAUSE THEY HAVE NOT DEMONSTRATED THAT THEY ARE**
17 **ENTITLED TO WEAPON IDENTIFICATION CARDS**

18 The Court cannot grant summary judgment in favor of the Plaintiffs because they have
19 not demonstrated that they are entitled to an identification card issued pursuant to the Weapons
20 Control Act. Any person wishing to acquire an identification card issued pursuant to the
21 Weapons Control Act must prove: (1) that he or she is twenty-one years of age or older; (2) that
22 he or she has successfully completed the Mandatory Firearms Safety Course; (3) that he or she
23 has not been acquitted of a criminal charge by reason of insanity; (5) that he or she has not been
24 adjudicated mentally incompetent; (6) that he or she has not been treated in a mental hospital for
25 mental illness, drug addiction, or alcoholism; (7) that he or she has not been convicted of a crime
26 for which actual or attempted personal injury or death is an element; (8) that he or she has not
27
28

1 been convicted of a crime in connection with which firearms or dangerous devices were used or
2 found in their possession; (9) not convicted of a crime for which the use, possession, or sale of
3 narcotics or dangerous drugs is an element; (10) that he or she has not been suffering from a
4 physical condition or impairment which makes the person unable to use a firearm or dangerous
5 device with proper control; and (11) that he or she may otherwise possess a firearm under federal
6 law. 6 CMC §§ 2204(d); 2204(f)(1)-(6); 2205(a). The moving party must identify the pleadings,
7 depositions, affidavits, or other evidence that it “believes demonstrates the absence of a genuine
8 issue of material fact.” *Celotex Corp.*, 477 U.S. at 323. “The burden of establishing the
9 nonexistence of a ‘genuine issue’ is on the party moving for summary judgment.” *Id.* at 330
10 (citations omitted). Further, “[i]f a moving party fails to carry its initial burden of production, the
11 nonmoving party has no obligation to produce anything, even if the nonmoving party would have
12 the ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co.*, 210 F.3d at 1102-03.
13 To establish redressability, Plaintiffs were required to demonstrate that it is “likely, as opposed to
14 merely speculative, that the injury will be redressed by a favorable decision.” *Catholic League*
15 *for Religious & Civil Rights*, 624 F.3d at 1053 (quoting *Lujan*, 504 U.S. at 561). Here, the
16 Plaintiffs have not come forth with evidence which would allow this Court to conclude that they
17 are entitled to identification cards issued pursuant to the Weapons Control Act. Without
18 identification cards, the Plaintiffs cannot possess firearms in the Commonwealth. 6 CMC
19 § 2204(a). If the Plaintiffs cannot demonstrate that they are entitled to identification cards, then
20 the Court cannot be assured that a favorable decision will redress the Plaintiff’s alleged injuries.
21 As such, the Court must dismiss the Plaintiffs’ Complaint for lack of subject matter jurisdiction.
22
23
24
25
26
27
28

1 **C. THE COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION OVER**
2 **THE CLAIMS BROUGHT BY LI-RONG RADICH BECAUSE SHE IS NOT**
3 **ENTITLED TO POSSESS FIREARMS IN THE COMMONWEALTH**

4 Li-Rong Radich cannot legally possess a handgun or any other firearm in the
5 Commonwealth because she is not a citizen or national of the United States. “Only a person who
6 is a permanent resident of the Commonwealth or a United States citizen or a United States
7 national and a bona fide resident of the Commonwealth is eligible for an identification card or
8 for renewal thereof.” 6 CMC § 2204(l). Plaintiff Li-Rong Radich is not a citizen or national of
9 the United States. Compl. ¶ 7. Therefore, Li-Rong Radich cannot legally possess a firearm in the
10 Commonwealth unless she can prove that she is a permanent resident of the Commonwealth.
11

12 Li-Rong Radich cannot prove that she is a permanent resident of the Commonwealth.
13 Public Law 7-38 added the category of “permanent resident of the Commonwealth” to the
14 allowable firearm applicants in 6 CMC § 2204. Public Law 7-38 was passed on October 11,
15 1991. In 1991, “permanent resident of the Commonwealth” was defined by Public Law
16 3-105 § 3(t): “‘Permanent resident’ means a person granted permanent resident status in the
17 Commonwealth of the Northern Mariana Islands by operation of statute.” The immigration status
18 of “permanent resident” and a large portion of the immigration code were repealed by Public
19 Law 17-1 § 5(c), shortly after Congress extended the immigration laws of the United States to
20 the Commonwealth of the Northern Mariana Islands. *See* 48 U.S.C. § 1806. As such, Li-Rong
21 cannot be a permanent resident of the Commonwealth because it is no longer an immigration
22 status recognized by law.
23
24

25 Li-Rong Radich cannot claim that her husband, David Radich, is her sponsor as
26 contemplated by 6 CMC § 2204(l). “Immediate relative” and “sponsor” refer to an immigration
27 status which no longer exists under Commonwealth law. *See* PL 3-105 § 3(m); PL 17-1 § 5(c).
28

1 As such, Li-Rong Radich cannot be the “immediate relative” of David Radich because the
2 immigration status of “immediate relative” no longer exists under Commonwealth law.

3 Li-Rong Radich cannot own a firearm in the Commonwealth. *See* 6 CMC § 2204(l). To
4 establish redressability, Li-Rong Radich must demonstrate that it is “likely, as opposed to merely
5 speculative, that the injury will be redressed by a favorable decision.” *Catholic League for*
6 *Religious & Civil Rights*, 624 F.3d at 1053 (quoting *Lujan*, 504 U.S. at 561). Here, the Court
7 cannot redress Li-Rong’s alleged injuries because a separate statute, which is not before the
8 Court, prohibits the conduct that the Plaintiff wishes to engage in. *See Nuclear Info. & Res.*
9 *Serv.*, 457 at 955. Therefore, the Court cannot redress any the Plaintiff’s alleged injuries with a
10 favorable ruling.
11

12 Accordingly, the Court should dismiss Li-Rong Radich from this case for lack of subject
13 matter jurisdiction over her claims.
14

15 **D. THE COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION OVER**
16 **PLAINTIFFS’ CLAIMS BECAUSE THE PLAINTIFFS HAVE NOT ATTENDED**
17 **AND COMPLETED THE FIREARM SAFETY CLASS REQUIRED BY LAW**

18 The Court cannot grant summary judgment in favor of the Plaintiffs because they have
19 not demonstrated that they are entitled to an identification card issued pursuant to the Weapons
20 Control Act. Any person wishing to acquire an identification card pursuant to the Weapons
21 Control Act must attend and successfully complete the Mandatory Firearms Safety Course
22 offered by the Department of Public Safety. 6 CMC § 2204(d). To establish redressability, the
23 Plaintiffs must demonstrate that it is “likely, as opposed to merely speculative, that the injury
24 will be redressed by a favorable decision.” *Catholic League for Religious & Civil Rights*, 624 at
25 1053 (quoting *Lujan*, 504 U.S. at 561). Here, the Plaintiffs have not attended the mandatory
26 firearm safety class required by law. Ex. 2 ¶¶ 7-9; Ex. 3 ¶ 9. If the Plaintiffs cannot establish that
27
28

1 they have completed the mandatory firearms class, then the Plaintiffs cannot establish that they
2 are entitled to an identification card issued pursuant to the Weapons Control Act. 6 CMC
3 § 2204(d). If the Plaintiffs cannot acquire Weapon Identification Cards, then as a matter of law, a
4 favorable decision by this Court will not redress the Plaintiffs' alleged injuries because they will
5 still be unable to lawfully possess firearms in the Commonwealth. Accordingly, the Court must
6 dismiss the Plaintiffs' claims for lack of subject matter jurisdiction.
7

8 **E. CONCLUSION**

9 The Plaintiffs, for a variety of reasons, cannot establish that this Court has jurisdiction
10 over their claims. Subject matter jurisdiction is a threshold matter that must be determined before
11 the Court entertains the merits of the case. If the Court finds that it does not have subject matter
12 jurisdiction, then the Court must immediately dismiss the action. Fed. R. Civ. P. 12(h)(3).
13 Wherefore, the Defendant opposes the Plaintiffs' motion for summary judgment because the
14 Court lacks subject matter jurisdiction over Plaintiffs' Complaint.
15

16 The Court should dismiss Plaintiffs' Complaint for lack of subject matter jurisdiction in
17 accordance with Fed. R. Civ. P. 12(h)(3).

18 **V. THE HELLER-MCDONALD CONSTRUCTION OF THE SECOND**
19 **AMENDMENT IS NOT APPLICABLE TO THE COMMONWEALTH BECAUSE**
20 **IT DIRECTLY CONTRADICTS THE INTENT OF THE FRAMERS OF THE**
21 **COVENANT**
22

23 The Plaintiffs seek to impose upon the Commonwealth an interpretation of the Second
24 Amendment which is directly contrary to the intent of the framers of the Covenant. The Court
25 should hold, that where a subsequent interpretation of a constitutional right is directly contrary to
26 the known understanding of the framers, it may not be enforced against the Commonwealth,
27 based on the fundamental principle that the intent of the framers is paramount when interpreting
28

1 the Covenant. Wherefore, the Defendant opposes Plaintiffs' Motion for Summary judgment.

2 On June 17, 1975, the people of the Northern Marianas Islands voted as a plebiscite to
3 approve the Covenant to Establish a Commonwealth of the Northern Marianas Islands in
4 Political Union with the United States of America ("Covenant"). On March 24, 1976, the
5 Covenant was signed into law by President Gerald Ford. The relations between the
6 Commonwealth and the United States are "governed by th[e] Covenant which, together with
7 those provisions of the Constitution, treaties and laws of the United States applicable to the
8 Northern Mariana Islands, [is] the supreme law of the Northern Mariana Islands." Covenant
9 § 102.
10

11 The Plaintiff argues that "the rights protected by the Second Amendment, as described in
12 *Heller* and *McDonald*, apply fully [in] this case." ECF 17 at 5. The only support for Plaintiffs'
13 contention is Covenant § 501(a), which lists the Second Amendment and § 1 of the Fourteenth
14 Amendment among those provisions of the U.S Constitution applicable in the CNMI.
15

16 However, since the Covenant was entered into in 1975, prior to the decisions in *Heller*
17 and *McDonald*, the question arises whether the Second and Fourteenth Amendments, as adopted
18 by the Commonwealth in the Covenant, should be construed consistently with those later cases,
19 or whether they should instead be construed as they were commonly understood in 1975, which
20 was contrary to both *Heller* and *McDonald*.
21

22 At the time of the Covenant, the Second Amendment was consistently held to protect
23 only a collective, not an individual, right to bear arms. *See, e.g., United States v. Johnson*, 497
24 F.2d 548, 550 (4th Cir. 1974) ("The courts have consistently held that the Second Amendment
25 only confers a collective right of keeping and bearing arms."); *Stevens v. United States*, 440 F.2d
26 144, 149 (6th Cir. 1971) ("[T]here can be no serious claim to any express constitutional right of
27 an individual to possess a firearm."). This "collective right" view of the Second Amendment,
28

1 which was usually held to derive from *United States v. Miller*, 307 U.S. 174 (1939) (*see, e.g.*,
2 *Johnson and Stevens* (both citing *Miller*)), would not be disavowed by any circuit court prior to
3 *United States v. Emerson*, 270 F.3d 203 (5th Cir. 2001), which re-opened the issue and led
4 ultimately to *Heller*. *See Silveira v. Lockyer*, 312 F.3d 1052, 1060-66 (9th Cir. 2002) (reviewing
5 history). *See also, e.g., United States v. Cruikshank*, 92 U.S. 542, 553 (1875) (“The second
6 amendment declares that [the right to bear arms] shall not be infringed; but this, as has been
7 seen, means no more than that it shall not be infringed by Congress.”); *Presser v. Illinois*, 116
8 U.S. 252, 265 (1886) (“[T]he [second] amendment is a limitation only upon the power of
9 congress and the national government, and not upon that of the state[.]”).

11 Plaintiff may argue that the *Heller-McDonald* constructions must be adopted, based on
12 the principle that a new construction of an existing law does not create new law, but rather
13 corrects the understanding of what the law has always been, and that the Second and Fourteenth
14 Amendments actually meant the same thing in 1975 as they do now, notwithstanding the fact that
15 no one yet knew it.¹

17 Even if the validity of this principle is conceded *arguendo*, however, it does not compel
18 the adoption of the *Heller-McDonald* construction for the Commonwealth, because the
19 underlying ideal to which the principle aspires is, in the case of constitutional interpretation, not
20 a “platonic ideal” of the common law, but rather the intent of the framers and ratifiers of the
21 provision being construed. Because the framers and ratifiers of the Covenant were different
22 people from the framers and ratifiers of the Second and Fourteenth Amendments, acting at
23 different places and times, it necessarily follows that they may well have had a different intent.

25 ¹ *See, e.g., Great Northern Ry. Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358, 365 (1932) (Cardozo, J.) (noting
26 “the ancient dogma that the law declared by [the] courts had a Platonic or ideal existence before the act of
27 declaration, in which event the discredited declaration will be viewed as if it had never been, and the reconsidered
28 declaration as law from the beginning”); 1 Blackstone, *Commentaries on the Laws of England* (1st ed.) at 70 (“[I]n
such cases [i.e., when stating a new rule of law] the subsequent judges do not pretend to make a new law, but to
vindicate the old one from misrepresentation.”). *See generally Hill v. Equitable Trust Co.*, 851 F.2d 691, 695-96
(3rd Cir. 1988) (discussing concept).

1 In other words, it may be conceded *arguendo* that *Heller* has accurately discerned and declared
2 the intent of the framers and ratifiers of the Second Amendment in 1791, and that *McDonald* has
3 accurately discerned and declared the intent of the framers and ratifiers of the Fourteenth
4 Amendment in 1868. Be that as it may, *Heller* and *McDonald* do not tell us what the framers and
5 ratifiers of the Covenant intended in 1975, leaving that a question which the court in this case
6 must determine independently.
7

8 It is particularly important that the intent of the framers be examined and determined
9 independently, because – unlike the States, which, upon admission, automatically adopted the
10 entire U.S. Constitution – the Commonwealth adopted the U.S. Constitution on a clause-by-
11 clause, sometimes issue-by-issue, basis. *See* Covenant § 501. The framers therefore were
12 required to analyze each provision of the Constitution in terms of its appropriateness for the
13 Commonwealth.² And because the framers provided for the application of each provision to the
14 Commonwealth “as if the Northern Mariana Islands were one of the several States,” they needed
15 to, and did, specifically consider whether and how each provision applied to the States, to
16 determine whether and how it would apply to the Northern Mariana Islands if included in the
17 Covenant.
18

19 The framers’ information on this point was to the effect that the Second Amendment did
20 not limit state government action in any way. For example:
21

22 ²See, e.g., Ex. 4: [Marianas Political Status Commission] *Position Paper: Future Political Status of Mariana Islands*
23 (May 10, 1973) at 5-6 (¶ D) (“There are some provisions [of the Constitution] which may not be appropriate to the
24 Marianas . . .”); Ex. 5: Unknown Author, *Analysis of Political and Legal Nature of Relationship Between NMI and*
25 *US* (January 1974) at ¶8 (“The parties are currently studying other provisions of the U.S. Constitution, which should
26 be explicitly considered in the Status Agreement.”); Ex. 6: [Marianas Political Status Commission] *Memorandum:*
27 *Marianas – Applicability of the U.S. Constitution* (1974) (discussion and comparison of the constitutional provisions
28 proposed for the Marianas by both sides); Ex. 7: [Office for Micronesian Status Negotiations] *Memorandum:*
Marianas Commonwealth, Application of Articles of the U.S. Constitution (July 8, 1974) (discussion of application
of articles of the U.S. Constitution). All documents cited herein reflecting the negotiating history of the Covenant
can be found online at the website of the Northern Marianas Humanities Council
(<http://northernmarianashumanities.org/sec.asp?secID=21>), under the heading “The Northern Mariana Islands
Original Historical Documents on Development of a U.S. Commonwealth, 1960-1977,” or directly at
http://nmhcdigitalarchive.org/histdoc1960_1977/.

1 This amendment, noting the necessity of a well-regulated militia to the security of
2 a free state, prohibits infringement by Congress of the right to keep and bear arms,
3 but it does not extend this prohibition to state action. Thus . . . the amendment
would impose no special obligations on the Mariana[s] government[.]

4 Ex. 7 at 11 (emphasis added) (citing *Presser*). See also Ex. 8 at 2 (listing the Second
5 Amendment among those “[a]mendments wherein applicability to the States under the
6 Fourteenth Amendment does not apply”) (emphasis in original) (citing *Presser*). That was the
7 slate upon which they understood themselves to be writing, and they did not choose to disturb it.
8 When the framers of the Covenant agreed to apply the Second and Fourteenth Amendments to
9 the Commonwealth as if it were one of the States, they understood that to mean the Second
10 Amendment did not apply to state action and the Fourteenth Amendment would not make it so.

11 This understanding is confirmed by the record of the First Northern Mariana Islands
12 Constitutional Convention, in which the people first undertook to implement the Covenant by
13 exercising their new self-government rights.³ The Convention’s briefing paper on the Bill of
14 Rights⁴ explicitly states that the right to bear arms applies only against the federal government.
15 See Ex. 9: *Briefing Paper No. 7: Bill of Rights* (October 8, 1976) at 50 (discussion under the
16 heading “rights secured by the United States Constitution but not applicable against the Northern
17 Marianas government”); *id.* at n. 123 (“The Supreme Court, has limited the Second
18 Amendment’s protection to only infringement by Congress, not by any state regulatory
19
20
21

22 ³ The Plaintiffs may object that evidence of the Convention postdates the Covenant itself, but the *Heller* Court
23 explained that such inquiry into “the public understanding of a legal text in the period after its . . . ratification” is a
24 “critical tool of constitutional interpretation.” *Heller*, 554 U.S. at 605. See also, e.g., *Zicherman v. Korean Air*
25 *Lines Co., Ltd.*, 516 U.S. 217, 226 (1996) (noting that the aids to the interpretation of a treaty include not only the
26 “negotiating and drafting history” but also “the postratification understanding of the contracting parties”). It also
27 bears mention that six delegates to the First NMI Constitutional Convention – Olympio T. Borja, Jose R. Cruz,
28 Herman Q. Guerrero, Benjamin T. Manglona, Francisco T. Palacios, and Oscar C. Rasa – had also been members of
the Marianas Political Status Commission which negotiated the Covenant. See Willens & Siemer, *An Honorable*
Accord (2002) at 38, 218 (listing the members of the Commission).

⁴ The briefing papers “were submitted to the delegates before the opening of the Convention” and served to explain
the basic legal background against which the delegates were working. Willens & Siemer, *The Constitution of the*
Northern Mariana Islands: Constitutional Principles and Innovation In a Pacific Setting, 65 Geo. L.J. 1373, 1585-
86 (1977).

1 scheme.”) (citing *Cruikshank*); *id.* at App’x A (listing the Second Amendment right to bear arms
2 as “applicable under Covenant only to federal government.”).⁵ The significance of this limited
3 application is explained generally as follows:

4 With respect to each of the federal rights not made applicable against the
5 Commonwealth government under the Covenant . . . omission will mean that the
6 right is not secured against the Commonwealth government, either by the federal
7 or the Commonwealth Constitution.

8 *Id.* at 4. Further, the right to bear arms was explained as follows:

9 If the Commonwealth Constitution is silent [on the right to bear arms], the people
10 are protected against federal action in this area by the United States Constitution,
11 but the Commonwealth government could prohibit the possession of all firearms
12 if that were deemed appropriate.

13 *Id.* at 51.

14 The Convention thus understood silence on the topic of the right to bear arms to leave the
15 legislature free to legislate in that area as it saw fit, and it chose to be silent.⁶ This silence was
16 knowing and deliberate. The Convention’s initial draft of what is now Article I of the
17 Commonwealth Constitution, dealing with personal rights, included a section based on the
18 Second Amendment, as follows: “Section 7: Availability of a Militia. In order that a militia may
19 be available if necessary in times of emergency, the right of the people to keep and bear arms
20 shall not be infringed.” Ex. 10: *Report No. 4, Committee on Personal Rights* at 2 (October 29,
21 1976). The Committee took a “collective right” view of Section 7: “The Committee’s proposed
22 constitutional provision does not guarantee the right of an individual to possess any particular
23 gun.” *Id.* at 13. Even so, Delegate Joaquin S. Torres proposed to substitute the following

24 _____
25 ⁵ All records of the First Constitutional Convention cited herein are available at the Humanities Council website
26 cited above, under the heading, “The Making of a Constitution. Documents from NMI Constitutional Conventions,”
27 or directly at <http://nmhcdigitalarchive.org/ConConVer.1.0/>.

28 ⁶ The briefing paper also adopts a “collective right” understanding of the right to bear arms: “The right to bear arms
has been interpreted by the Supreme Court as designed to further the policy of a “well regulated militia.” The
Amendment, therefore, guarantees the right of a state to maintain a militia, not that of an individual to possess any
particular weapon. *Id.* at 50 (citing *Miller*).

1 language: “Section 7: Gun Control. The legislature shall by law restrict the right of persons
2 living in the Commonwealth to own hand guns. The laws enacted pursuant to this section shall
3 contain no exceptions except those required for the public safety.” Ex. 11: *Proposed Amendment*
4 *No. 37* (November 20, 1976). The Committee clarified that its intention with Section 7 had been
5 only to guarantee the availability of the militia in case of emergency, “eliminat[ing] the
6 confusion” on that point by deleting Section 7 altogether, and recommending the withdrawal of
7 Delegate Torres’ proposed amendment on the ground that its subject constituted a “legislative
8 matter.” Ex. 12: *Report [on] Article I, Committee [on] Personal Rights* (November 22, 1976) at
9 2-3. *See also* Ex. 13: *Verbatim Journal, Day 36* at 2 (November 22, 1976). The people of the
10 Northern Mariana Islands, as represented in their Constitutional Convention, thus manifestly
11 understood the regulation of firearms to be within the scope of “internal affairs” subject to self-
12 government under Covenant § 103, and within “all rightful subjects of legislation” under
13 Covenant § 203(c), and not to be restricted by the Second or Fourteenth Amendment as adopted
14 in Covenant § 501(a); and they consciously left the legislature free to deal with it without
15 restriction.

16
17
18 To apply the *Heller-McDonald* construction in the Commonwealth would therefore be to
19 act contrary to the manifest understanding and intent of the framers and ratifiers of the Covenant.
20 Had those decisions been law prior to 1975, the framers would have had the opportunity to carve
21 out exceptions around them in the Covenant, as they did with respect to other problematic
22 constitutional principles, and they might well have done so. In any event, they were satisfied to
23 adopt the Second and Fourteenth Amendments understanding their meaning to be contrary to
24 *Heller-McDonald*, and that decision should be respected and upheld by the Court.

25
26 It is of no import whether the framers’ understanding of the Second and Fourteenth
27 Amendments was, in any abstract sense, correct. Apparently, in light of *Heller* and *McDonald*, it
28

1 was not. The very fact that it was their understanding, however, means that it is correct for
2 purposes of construction of the Covenant.⁷

3 Plaintiffs may argue that it would be legally erroneous or practically unworkable to
4 strictly limit the application of the U.S. Constitution in the Commonwealth, across the board, to
5 its pre-1975 constructions, and to deny the binding effect of any Supreme Court decisions after
6 that date. That, however, is not what the Defendant is suggesting. The Defendant suggests that
7 this Court should adopt an intermediate rule, whereby post-1975 constructions are generally
8 applicable in the Commonwealth, except under the most exceptional circumstances, analogous to
9 the principles governing whether a new rule announced by a court is to be applied prospectively
10 only.⁸

11
12 Wherefore, the Court should hold, that where a subsequent interpretation of a
13 constitutional right is directly contrary to the known understanding of the framers and ratifiers of
14 the Covenant, it may not be enforced against the Commonwealth, based on the fundamental
15 principle that the intent of the framers and ratifiers is paramount when interpreting the Covenant.
16
17

18 ⁷ See generally, e.g., *Brown v. General Services Administration*, 425 U.S. 820, 828 (1976) (“Whether [the]
19 understanding of Congress was in some ultimate sense incorrect is not what is important in determining the
20 legislative intent in amending the 1964 Civil Rights Act to cover federal employees. For the relevant inquiry is not
21 whether Congress correctly perceived the then state of the law, but rather what its perception of the state of the law
22 was.”).

23 ⁸ The Supreme Court has stated those principles as follows:

24 First, the decision to be applied nonretroactively must establish a new principle
25 of law, either by overruling clear past precedent on which litigants may have
26 relied, or by deciding an issue of first impression whose resolution was not
27 clearly foreshadowed. Second, it has been stressed that we must weigh the
28 merits and demerits in each case by looking to the prior history of the rule in
question, its purpose and effect, and whether retrospective operation will further
or retard its operation. Finally, we have weighed the inequity imposed by
retroactive application, for where a decision of this Court could produce
substantial inequitable results if applied retroactively, there is ample basis in our
cases for avoiding the injustice or hardship by a holding of nonretroactivity.

29 *Chevron Oil Co. v. Huson*, 404 U.S. 97, 107 (1971) (citations and quotations omitted) *disapproved*
30 *on other grounds by Harper v. Virginia Dep’t of Taxation*, 509 U.S. 86 (1993).

1 Here, Plaintiffs seek to impose upon the Commonwealth an interpretation of the Second
2 Amendment which is directly contrary to the intent of the framers and ratifiers of the Covenant.
3 Accordingly, the Court should deny Plaintiffs’ Motion for Summary Judgment.

4 **VI. COUNT I**

5 If the Court finds that the Plaintiffs have standing and that the subsequent interpretation
6 of the Second Amendment by the Supreme Court controls, regardless of what the framers
7 intended, then the Defendant opposes Plaintiffs’ Motion for Summary Judgment because the
8 *Heller-McDonald* construction of the Second Amendment does not require the constitutional
9 protection of handguns in the Commonwealth.

10 **A. THE SECOND AMENDMENT DOES NOT PROTECT THE RIGHT TO**
11 **POSSESS HANDGUNS IN THE COMMONWEALTH**

12 The Court must utilize a two-step inquiry for determining the constitutionality of a statute
13 challenged under the Second Amendment. *United States v. Chovan*, 735 F.3d 1127, 1136 (9th
14 Cir. 2013) *cert. denied*, 135 S. Ct. 187 (2014). The Court begins by determining whether the
15 challenged statute burdens conduct protected by the Second Amendment. *Id.*; *Peruta v. Cnty. of*
16 *San Diego*, 742 F.3d 1144, 1150 (9th Cir. 2014). If the Court finds that the challenged statute
17 burdens the Plaintiffs’ rights under the Second Amendment, then the Court must apply an
18 appropriate level of scrutiny. *Id.*

19 **1. THE INDIVIDUAL RIGHT TO BEAR ARMS**

20 The Second Amendment provides: “A well regulated Militia, being necessary to the
21 security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” In
22 *Heller*, the United States Supreme Court held “that the Second Amendment codified a
23 pre-existing, individual right to keep and bear arms and that the ‘central component of the right’
24 is self-defense.” *Peruta*, 742 F.3d at 1149 (quoting *D.C. v. Heller*, 554 U.S. 603, 628-629
25
26
27
28

1 (2008)). However, the Court cautioned that “[l]ike most rights, the right secured by the Second
2 Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators
3 and courts routinely explained that the right was not a right to keep and carry any weapon
4 whatsoever in any manner whatsoever and for whatever purpose.” *Heller*, 554 U.S. at 626.
5 “Rather, it is a right subject to ‘traditional restrictions,’ which themselves—and this is a critical
6 point—tend ‘to show the scope of the right.’ *Peruta*, 742 F.3d at 1151 (quoting *McDonald*, 130
7 S.Ct. at 3056 (Scalia, J., concurring)).

9 2. THE SECOND AMENDMENT PROTECTS THE RIGHT TO POSSESS HANDGUNS
10 IN THE STATES BECAUSE OF THEIR WIDESPREAD USAGE BY THE
11 AMERICAN PEOPLE

12 Handguns do not enjoy Second Amendment protection in the Commonwealth because
13 they have never been possessed or used for self-defense by the people of the Commonwealth. As
14 the Supreme Court explained, handguns are given constitutional protection because of their
15 widespread use by the citizens of the states: in *Heller* “the Court found that this right applies to
16 handguns because they are ‘the most preferred firearm in the nation to ‘keep’ and use for
17 protection of one's home and family,’ It thus concluded that citizens must be permitted ‘to use
18 [handguns] for the core lawful purpose of self-defense.’” *McDonald*, 561 U.S. at 744-45
19 (quoting *Heller*, 554 U.S. at 628) (internal citations omitted). If the widespread usage of
20 handguns for self-defense justifies their constitutional protection, then it logically follows that
21 the Supreme Court would have denied constitutional protection to handguns if they had never
22 been used by law abiding citizens for self-protection. As the Defendant will show, handguns
23 have never been used by the law-abiding people of the Commonwealth for the purpose of
24 self-defense.
25
26
27
28

1 3. THE LAW ABIDING CITIZENS OF THE COMMONWEALTH HAVE NEVER USED
2 HANDGUNS FOR THE PURPOSES OF SELF-DEFENSE

3 The Supreme Court, in both *Heller* and *McDonald*, made multiple statements about the
4 prevalence of handguns in the states. However, the Court's statements regarding handguns were
5 premised upon data that did not include the Commonwealth. *Heller*, 554 U.S. at 629 (citing
6 *Parker v. D.C.*, 478 F.3d 370, 400 (D.C. Cir. 2007) *aff'd sub nom. D.C. v. Heller* at 570 (citing
7 Gary Kleck & Marc Gertz, *Armed Resistance to Crime: The Prevalence and Nature of Self-*
8 *Defense with A Gun*, 86 J. Crim. L. & Criminology 150, 160 (1995). The handgun data cited by
9 the Court was obtained by telephonic surveys in the lower forty-eight states over twenty-two
10 years ago. Kleck, *supra* at 160. Therefore, this Court must consult the available handgun data in
11 the Commonwealth to determine whether or not handguns are the preferred weapon of
12 self-defense amongst law abiding citizens.
13
14

15 Handguns have never been permitted in the Commonwealth. The Weapons Control Act
16 prohibits the possession of handguns. 6 CMC § 2222(e). The Weapons Control Act was adopted
17 by the Trust Territory on July 8, 1971. 63 TTC § 551; TT PL 4C-13 § 1. Thereafter, the
18 Commonwealth adopted its Constitution, which provided that the “[l]aws in force in the
19 Northern Mariana Islands on the day preceding the effective date of the Constitution that are
20 consistent with the Constitution and the Covenant shall continue in force until they expire or are
21 amended or repealed.” NMI Const. Trans'l Matters § 2. As such, Commonwealth law has always
22 prohibited the possession of handguns and no law abiding Commonwealth citizen has ever
23 possessed a handgun for the purposes of self-defense.
24

25 The handgun data compiled by the Defendant proves what is already known: the law
26 abiding citizens of the Commonwealth have never possessed handguns for the purposes of
27 self-defense. In the previous thirty-two years, the citizens of the Commonwealth registered 914
28

1 rifles, 301 shotguns, and 0 handguns to be possessed in the Commonwealth. Ex. 2 ¶ 12. Simply
2 put, the data clearly demonstrates that handguns have never been “the most preferred firearm” in
3 the Commonwealth and the people of the Commonwealth have never “considered the handgun to
4 be the quintessential self-defense weapon.” On the contrary, the citizens of the Commonwealth
5 have always enjoyed a community free of handguns.
6

7 4. THE SECOND AMENDMENT DOES NOT PROTECT HANDGUNS IN THE
8 COMMONWEALTH

9 In *McDonald*, the Court clarified that the widespread usage of handguns for self-defense
10 is what justified their constitutional protection in *Heller*: “[e]xplaining that ‘the need for defense
11 of self, family, and property is most acute’ in the home, *we found that this right applies to*
12 *handguns because they are ‘the most preferred firearm in the nation to “keep” and use for*
13 *protection of one’s home and family’ McDonald*, 561 U.S. at 767 (emphasis added) (quoting
14 *Heller* at 628. “Thus, we concluded, citizens must be permitted ‘to use [handguns] for the core
15 lawful purpose of self-defense.’” *Id.*

16
17 If the Court concluded that handguns are deserving of constitutional protection because
18 they are widely used by United States citizens for the purpose of self-defense, then it logically
19 follows that handguns do not enjoy constitutional protection in the Commonwealth because they
20 have never been used by its citizens for the purpose of self-defense. To say otherwise is to
21 discount and ignore the reasoning used by the Court in both *Heller* and *McDonald*. If the Court
22 had meant that handguns deserve constitutional protection because they are firearms, without any
23 further justification required, then the Court would have stated that handguns are constitutionally
24 protected because the Second Amendment protects all non-military firearms. Instead, the Court
25 reasoned that the widespread use of the handgun for self-defense was the deciding factor for
26 determining its constitutional protection. *Id.* Here, it is undisputed that the law abiding citizens of
27
28

1 the Commonwealth have never possessed handguns for the purposes of self-defense. Extending
2 constitutional protection to handguns in the Commonwealth has absolutely no basis in history,
3 fact, law, or reason. Accordingly, the Defendant urges the Court to adopt the analysis in *Heller*
4 and *McDonald* and hold that handguns are not protected by the Second Amendment in the
5 Commonwealth because they have never been used by the people of the Commonwealth for the
6 purpose of self-defense. Wherefore, the Commonwealth opposes the Plaintiffs' Motion for
7 Summary Judgment as to Count I.
8

9 **VII. CONCLUSION**

10 The Court must begin its analysis by determining whether it has jurisdiction to consider
11 the Plaintiffs' claims. The Court should dismiss Plaintiffs' Complaint for lack of subject matter
12 jurisdiction because the Plaintiffs cannot establish that a favorable ruling by this Court would
13 redress their alleged injuries.
14

15 If the Court finds that the Plaintiffs have standing, then the Court should deny summary
16 judgment as to all Counts because the *Heller-McDonald* construction of the Second Amendment
17 directly contradicts the intent of the framers and ratifiers of the Covenant.
18

19 If the Court finds that the Plaintiffs have standing, then the Court should deny summary
20 judgment as to Count I because handguns are not constitutionally protected in the
21 Commonwealth.
22

23 The Defendant does not specifically address Count III of the Plaintiff's Complaint
24 because it has been withdrawn from his Motion for Summary Judgment.
25

26 If the Court finds that Plaintiffs' Motion for Summary Judgment fails as a matter of law,
27 then summary judgment should be entered against the Plaintiffs' pursuant to Fed. R. Civ. P.
28 56(f)(1).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing was electronically filed on February 9, 2015, with service requested to all parties of record.

/s/
James Zarones, Bar No. T0102
Assistant Attorney General
Office of the Attorney General
Counsel for Department of Public Safety
Commonwealth of the
Northern Mariana Islands

1 OFFICE OF THE ATTORNEY GENERAL
2 Edward Manibusan
3 Attorney General
4 James M. Zarones (T0102)
5 Assistant Attorney General
6 Hon Juan A. Sablan Mem. Bldg., 2nd Floor
7 Saipan, MP 96950-8907
8 Tel: (670)-664-9023
9 Fax: (670)-664-2349
10 e-mail: jzarones@dps.gov.mp
11 Attorney for Defendant Commonwealth

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

LI-RONG RADICH AND
DAVID RADICH,

Plaintiffs,

v.

JAMES C. DELEON GUERRERO, in his
official capacity as Commissioner of the
Department of Public Safety of the
Commonwealth of the Northern Mariana
Islands,

Defendant.

Civil Action No. 14-0020

**DEFENDANT'S EXHIBIT LIST IN
SUPPORT OF OPPOSITION TO
MOTION FOR SUMMARY
JUDGMENT**

NOW INTO COURT, Defendant hereby files his Exhibit List in support of the
Defendant's Opposition to Motion for Summary Judgment. The Defendant's exhibits are as
follows:

Exhibit 1	Declaration of James C. Deleon Guerrero
Exhibit 2	Declaration of Officer Eric David
Exhibit A	Summary of Registered Firearms in the Commonwealth
Exhibit 3	Declaration of Officer David Hosono

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 4	Marianas Political Status Commission Position Paper: Future Political Status of Mariana Islands (May 10, 1973)
Exhibit 5	Unknown Author, <i>Analysis of Political and Legal Nature of Relationship Between NMI and US</i> (January 1974)
Exhibit 6	Marianas Political Status Commission <i>Memorandum: Marianas – Applicability of the U.S. Constitution</i> (July 15, 1974)
Exhibit 7	Office for Micronesian Status Negotiations <i>Memorandum: Marianas Commonwealth, Application of Articles of the U.S. Constitution</i> (July 8, 1974)
Exhibit 8	<i>Constitutional Rights Made Applicable to the States under the Fourteenth Amendment</i> (May 6, 1974)
Exhibit 9	Constitutional Convention <i>Briefing Paper No. 7: Bill of Rights</i> (October 8, 1976)
Exhibit 10	Constitutional Convention <i>Report No. 4, Committee on Personal Rights</i> (October 29, 1976)
Exhibit 11	Constitutional Convention <i>Proposed Amendment No. 37</i> (November 20, 1976)
Exhibit 12	Constitutional Convention <i>Report [on] Article I, Committee [on] Personal Rights</i> (November 22, 1976)
Exhibit 13	Constitutional Convention <i>Verbatim Journal</i> (Transcript) (November 22, 1976)
Exhibit 14	Declaration of James M. Zarones

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RESPECTFULLY SUBMITTED OFFICE OF THE ATTORNEY GENERAL

DATED: February 9, 2015

/s/
James Zarones
Assistant Attorney General
Office of the Attorney General
Commonwealth of the Northern Mariana Islands
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing was electronically filed on February 9, 2015, with service requested to all parties of record.

/s/
James Zarones, Bar No. T0102
Assistant Attorney General
Office of the Attorney General
Counsel for Department of Public Safety
Commonwealth of the
Northern Mariana Islands