C. D. MICHEL

SPECIAL COUNSEL:
W. LEE SMITH
JOSHUA R. DALE

ASSOCIATES:
SEAN A. BRADY
SCOTT M. FRANKLIN
HILLARY J. GREEN
THOMAS E. MACIEJEWSKI
CLINT B. MONFORT
TAMARA M. RIDER
JOSEPH A. SILVOSO, III
LOS ANGELES, CA

MICHEL & ASSOCIATES, P.C.
Attorneys at Law

OF COUNSEL:
DON B. KATES
SAN FRANCISCO, CA

RUTH P. HARING
LOS ANGELES, CA

GLENN S. MCROBERTS
SAN DIEGO, CA

AFFILIATE COUNSEL:
JOHN F. MACHTINGER
JEFFREY M. COHON
LOS ANGELES, CA

DAVID T. HARDY
TUCSON, AZ

Writer's Direct Contact:
(562) 216-4444
cmichel@michellawyers.com

November 2, 2011

Molly Dwyer, Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 941103
VIA E-FILING

Re: *Peruta v. County of San Diego*, Case No. 10-56971
Response to Appellees' October 27, 2011 Rule 28(j) letter

Ms. Dwyer:

The U.S. Supreme Court defined "bear" as meaning to "carry."[1] The *Kachalsky v. Cacace*, 2011 WL 3962550 (S.D.N.Y. Sept. 2, 2011), court erred by rejecting this definition, leading it to conclude the right to bear arms does not extend outside the home[2] – an erroneous conclusion as explained in pages 5-9 of Appellants' Reply Brief.

In *Hightower v. City of Boston*, 2011 WL 4543084 (D. Mass. Sept. 29, 2011), plaintiff's Second Amendment claims were dismissed as unripe because she sought the least-restrictive carry license available, and failed to seek another license that could allow her to carry, albeit more restrictedly. *Id.* at *9-*11. Appellants have no option to generally carry for self-defense without licenses Appellees denied them.

[1] *Dist. of Columbia v. Heller*, 554 U.S. 570, 584-91 (2008).

[2] *See id.* at *21-*22.

Hightower applied heightened scrutiny to firearm restrictions outside the home,[3] although its reasoning for why the standard was satisfied (*i.e.*, crime reduction) is foreclosed by *Nordyke v. King*, 644 F.3d 776 (9th Cir. 2011). *See* Opening Brief (OB) at 36-49.

Heller v. Dist. of Columbia, 2011 WL 4551558 (D.C. Cir. Oct. 4, 2011) ("*Heller II*"), held the validity of "presumptively lawful" firearm regulations is rebuttable by "showing the regulation [has] more than a de minimis effect upon [the] right" (*id*. at *6), and the government must "present some meaningful evidence, not mere assertions, to justify its predictive judgments"(*id*. at *11) as Appellants assert. *See* OB at 24-54.

Heller II applied intermediate (instead of strict) scrutiny because D.C. did not "prevent[] an individual from possessing a firearm in his home or elsewhere, whether for self-defense or hunting, or any other lawful purpose." *Id*. at *10. Appellees prevent Appellants from carrying firearms. Under *Heller II*'s reasoning, strict scrutiny applies here.

Williams v. State, 10 A.3d 1167 (Md. 2011), *cert. denied*, 2011 WL 4530130 (U.S. Oct. 3, 2011) did not involve firearm-carry licenses, making it irrelevant. It was decided in January. Appellees did not "promptly advise" this Court of *Williams* per Rule 28(j) or via their Answering Brief.

Date: November 2, 2011

Respectfully submitted,

/s C. D. Michel
C. D. Michel
Attorney for *Plaintiffs-Appellants*

[3] *See id.* at *19.

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2011, an electronic PDF of this Response to Appellees' October 27, 2011 Rule 28(j) letter was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

/s C. D. Michel
C. D. Michel
Attorney for *Plaintiffs-Appellants*