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November 26, 2012

The Hon. Molly Dwyer
United States Court of Appeals, Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1518

Re: *Richards v. Prieto*
U.S. Court of Appeals, Ninth Cir. No. 11-16255

Response to Appellees' Rule 28(j) Letter Dated October 29, 2012

Dear Ms. Dwyer:

Appellees overstate the value of *Hightower v. City of Boston*, 693 F.3d 61 (1st Cir. 2012).

Appellees highlight *Hightower's* recitation that prohibiting concealed handgun carrying is presumptively lawful, but that is undisputed. Appellants' Br. at 26.

Critically, *Hightower* "[did] not reach the issue of the scope of the Second Amendment as to carrying firearms outside the vicinity of the home without any reference to protection of the home." Slip Op. at 22 n.8.¹ *Hightower* limited plaintiff's claim to her revoked *concealed* carry license because she could have allegedly obtained a "Class B" open carry license. *Id.* at 17 & n.6.

Here, Appellants cannot carry handguns for self-defense absent the licenses Appellees denied them.

Hightower's limitation of prior restraint to the First Amendment ignores contrary examples, *e.g.* Reply Br. at 15, including precedent applying prior restraint principles to secure the right to arms. "The exercise of a right guaranteed

¹*Hightower's* footnotes are currently missing from LEXIS.

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by the Constitution cannot be made subject to the will of the sheriff.” *People v. Zerillo*, 189 N.W. 927, 928 (1922). In *Schubert v. De Bard*, 398 N.E.2d 1339, 1341 (Ind. App. 1980), police lacked

the power and duty to subjectively evaluate an assignment of ‘self-defense’ as a reason for desiring a license and the ability to grant or deny the license upon the basis of whether the applicant ‘needed’ to defend himself. Such an approach contravenes the essential nature of the constitutional guarantee.

(footnote omitted); *Kellogg v. City of Gary*, 562 N.E.2d 685, 694 (Ind. 1990); *State ex rel. City of Princeton v. Buckner*, 377 S.E.2d 139, 144 (1988).

[T]his Court will not countenance any system of permitting under the Firearms Act that would be committed to the unfettered discretion of an executive agency... One does not need to be an expert in American history to understand the fault inherent in a gun-permitting system that would allow a licensing body carte blanche authority to decide who is worthy of carrying a concealed weapon. The constitutional right to bear arms would be illusory...

Mosby v. Devine, 851 A.2d 1031, 1050 (R.I. 2004).

Sincerely,

/s/ Alan Gura

Alan Gura

The body of this letter contains 350 words.

cc: all counsel (via CM/ECF)