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February 27, 2015

VIA CM/ECF

Mark Langer, Clerk of Court
U.S. Court of Appeals for the D.C. Circuit
333 Constitution Avenue, NW
Washington, DC 20001

RE: *Dearth v. Holder*, No. 12-5305 (D.C. Cir.)
Re-argument scheduled for March 5, 2015

Dear Mr. Langer:

I am writing in response to plaintiffs' letters of February 23, 2015, which discussed decisions of the Sixth Circuit and the Northern District of Texas. For reasons discussed in our prior briefing, neither decision is persuasive on its own terms. But in any event, each decision relied on factors that are not present here.

In *Tyler v. Hillsdale County Sheriff's Department*, 775 F.3d 308 (6th Cir. 2014), the Sixth Circuit concluded that the plaintiff had stated a valid Second Amendment challenge to 18 U.S.C. § 922(g)(4), which prohibits the possession of firearms by persons who have been involuntarily committed to a mental institution. The court characterized the regulation as a restriction "that forever deprives a law-abiding, non-violent, non-felon of his Second Amendment rights." *Tyler*, 775 F.3d at 335. The statute at issue here, which limits the ability to obtain additional firearms during temporary visits to the United States, is not comparable: Dearth has not established that he lacks access to firearms while in the United States. In addition, plaintiffs' reliance on *Tyler* to suggest that an as-applied challenge need not be specifically raised cannot be reconciled with this Court's precedent. See *Schrader v. Holder*, 704 F.3d 980, 991 (D.C. Cir. 2013).

In *Mance v. Holder*, Civ. No. 14-cv-539, 2015 WL 567302 (N.D. Tex. Feb. 11, 2015), the district court credited a constitutional challenge to the federal

restriction on sales of handguns to persons who are not residents of the state where the dealer is located. The court premised its decision on its view that other federal statutes “ensure[] potential purchasers can legally acquire and possess a firearm under state and federal law.” *Id.* at *11. That case thus did not present the concerns at issue here, where there is no mechanism to ensure that purchasers who lack a state of residence comply with the laws of the state where the gun will ultimately be located. And that case’s standing discussion did not address an organization’s standing to raise an as-applied challenge, which would necessarily depend on the individual circumstances of its members. *See id.* at *5.

Sincerely,

Daniel Tenny
Counsel for the United States

cc: Counsel of Record (via CM/ECF)