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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

11 Ivan Peña, et al., ) Case No. 2:09-CV-01185-KJM-CKD  
12 )  
13 Plaintiffs, )  
14 )  
15 v. )  
16 )  
17 Stephen Lindley )  
18 )  
19 Defendant. )  
20 )  
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NOTICE OF SUPPLEMENTAL AUTHORITY

On February 11, 2015, the United States District Court for the Northern District of Texas struck down the federal interstate handgun transfer ban, 18 U.S.C. §§ 922(a)(3), 922(b)(3), 27 C.F.R. § 478.99. See *Mance v. Holder*, No. 4:14-CV-539-O, 2015 U.S. Dist. LEXIS 16679 (N.D. Tex. Feb. 11, 2015), attached hereto as Exhibit A. *Mance* is instructive, as it considered—and rejected—many of the same arguments offered here by Defendants.

In *Mance*, the Government argued that forbidding consumers from taking delivery of handguns outside their state of residence did not significantly burden

1 Second Amendment rights because consumers still had access to handguns. But  
2 because the challenged provision was not “longstanding,” the court held that the  
3 provision was not presumptively lawful. Accordingly, the inquiry into whether the  
4 burden imposed was significant or de minimis was inapplicable. *Mance*, 2015 U.S.  
5 Dist. LEXIS 16679, at \*21 (citation and footnote omitted). Of course, the provision at  
6 issue in *Mance*, like those challenged here, severely burdened Second Amendment  
7 rights. But unlike as in *Mance*, there is no argument here that California’s handgun  
8 rostering scheme is “longstanding.”  
9

10 The *Mance* defendants also argued, as do Defendants here, that the  
11 challenged provision was presumptively lawful as a restriction on the commercial  
12 sale of arms. But the *Mance* court rejected the notion that selling firearms somehow  
13 falls outside the Second Amendment’s scope, as that logic would allow for an  
14 “untenable” prospect that the Government may entirely prohibit the sale of firearms.  
15 *Id.* at \*25 n.8 (citation omitted). “[T]he Court finds that operating a business that  
16 provides Second Amendment services is generally protected by the Second  
17 Amendment, and prohibitions on firearms sales are subject to similar scrutiny.” *Id.*  
18

19 The *Mance* court proceeded to apply strict rather than intermediate scrutiny.  
20 The law operated against “all legally responsible and qualified individuals,” *id.* at  
21 \*22,  
22

23 impos[ing] substantial additional time and expense to those who desire to  
24 purchase [handguns]. Restricting the distribution channels of legal goods  
25 protected by the Constitution to a small fraction of the total number of  
possible retail outlets requires a compelling interest that is narrowly tailored.

26 *Id.* (citations omitted).  
27  
28

1           The provisions at issue here are in some ways more severe than those  
2 subjected to strict scrutiny in *Mance*. Defendants reduce selection and competition  
3 not by restricting consumers to a small fraction of the total number of retail outlets,  
4 but by increasingly shrinking the small fraction of handguns available for sale.

5  
6           The *Mance* court struck down the federal interstate handgun transfer ban not  
7 only facially, but as-applied to the law-abiding dealer and consumers who brought  
8 the case. And it did so not only using strict scrutiny, but alternately under  
9 intermediate scrutiny. The Government did not show that the law advanced its  
10 interests to a material degree (if at all), nor was prohibition of the entire interstate  
11 handgun market considered properly tailored to achieving the Government's  
12 objectives. Here, too, there is no evidence to show that the rostering law advances  
13 any safety interests, let alone to the degree required for its imposition under any  
14 level of heightened scrutiny.  
15

16           Finally, while Defendants here have argued that there is no role for equal  
17 protection analysis in a case of this nature, the *Mance* court held that the federal  
18 interstate handgun transfer ban violates the equal protection aspects of the Fifth  
19 Amendment's Due Process Clause. *Id.* at \*42-\*43. That portion of *Mance* should also  
20 be persuasive here. After all, the classifications here likewise "involve[] access to the  
21 constitutional guarantee to keep and bear arms." *Id.* at \*43.  
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1 Dated: February 12, 2015

Respectfully submitted,

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/s/ Donald E.J. Kilmer, Jr.  
Donald E.J. Kilmer, Jr.

/s/ Alan Gura  
Alan Gura

**CERTIFICATE OF SERVICE**

I hereby certify that on February 12, 2015, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

Notice of Supplemental Authority

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this the 12<sup>th</sup> day of February, 2015.

/s/ Alan Gura

Alan Gura

Counsel for Plaintiffs