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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**CIVIL MINUTES - GENERAL**

Case No.	CV 12-04005 GAF (FFMx)	Date	August 23, 2012
Title	Bruce Boyer v. City of Los Angeles		

Present: The Honorable	GARY ALLEN FEES		
Renee Fisher	None		N/A
Deputy Clerk	Court Reporter / Recorder		Tape No.
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:	
None		None	

Proceedings: (In Chambers)**ORDER RE: MOTION TO DISMISS****I.
INTRODUCTION**

Plaintiff Bruce Boyer (“Boyer”), individually and on behalf of the “Sons of Liberty LA” (the “Sons of Liberty”), brings this action against the City of Los Angeles (“the City”), alleging that the City has prevented him and other members of the Sons of Liberty from accessing its “Gun Buy Back” events held annually at various locations around Los Angeles. (Docket No. 1, Compl. ¶ 4.) The Court has previously denied Boyer’s application for a temporary restraining order in connection with the City’s May 12, 2012 Gun Buy Back event. (Docket No. 11, May 11, 2012 Order.) The City now moves to dismiss the complaint. (Docket No. 14.) For the reasons set forth below, the motion is **GRANTED**, and the complaint is **DISMISSED without leave to amend**.

**II.
BACKGROUND****A. THE CITY’S “GUN BUY BACK” EVENTS AND THE SONS OF LIBERTY**

Boyer alleges that, beginning in or around 2009, the City, under the auspices of the Office of the Mayor and the Los Angeles Police Department (“LAPD”), has sponsored and conducted a series of “Gun Buy Back” events, in which members of the public are invited to come to identified locations and to transfer possession of one or more firearms to the City, “no questions

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asked,” in return for gift cards usable at various merchants. (Compl. ¶ 4.) These events are typically held in mid-May, at various locations in Los Angeles. (*Id.*) According to Boyer, the City’s stated practice is to check each surrendered firearm to determine whether it can be identified as lost or stolen, and for the LAPD to destroy any and all other firearms received. (*Id.*)

Boyer believes that these events “are unwise as a matter of public policy, [and] that the events and the manner in which firearms are handled at and disposed of following these events may be unlawful.” (*Id.* ¶ 5.) In particular, Boyer believes that “the policy underlying Gun Buy Back Events – encouraging citizens to disarm – is counterproductive to the goal of heightening public safety, that rather than destroying surrendered firearms the more prudent policy would be to see to it that those firearms are lawfully and safely transferred to citizens who can and will use them for their personal safety, and that the Gun Buy Back program is counter to the individual right to bear arms confirmed by the Second Amendment to the Constitution.” (*Id.*)

To express these views concerning the City’s Gun Buy Back events, Boyer and the Sons of Liberty have, since 2010, appeared in the vicinity of these events and attempted to communicate an opposing viewpoint to participants, and to “offer those persons arriving with firearms an alternative means of disposing of them.” (*Id.* ¶ 6.) In particular, the Sons of Liberty “offer[] information and assistance so that those who wish to do so can instead present firearms to duly licensed firearms dealers for valuation and sale, frequently for sums substantially in excess of the nominal amounts being proffered via gift cards by the City.” (*Id.* ¶ 7.) Boyer alleges that “the City has consistently and persistently taken measures to prevent the attendance, assembly, and speech activities of [the Sons of Liberty], by methods including refusing access to the event and its vicinity, and the direct threat of unauthorized arrest by officers of the LAPD.” (*Id.* ¶ 6.) For instance, Boyer alleges that he was arrested for trespass at a 2010 Gun Buy Back event in Hollywood, “as he attempted to enter the event site on foot, through its designated entrance, and to converse with participants.” (*Id.*) Boyer also alleges that other members of the Sons of Liberty “have been threatened with arrest without cause merely for being near an event site” (*Id.*) Boyer alleges that the City has characterized the Sons of Liberty as “solicitors,” and that, following the 2010 Gun Buy Back event, “Commissioner Skobin [has] instructed the [LAPD] to look into the legality of the solicitors and ensure they are not present for the next Buy Back event.” (*Id.*)

B. THE CITY’S MAY 12, 2012 “GUN BUY BACK” EVENT AND BOYER’S APPLICATION FOR A TRO

Following the City’s announcement of its May 12, 2012 Gun Buy Back event, the Sons of

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Liberty contacted City representatives and sought to obtain permission to be present at or immediately adjacent to the scheduled event, “so that they may participate meaningfully and have a fair opportunity to communicate with attendees, to convey their point of view on the law and policy surrounding the events, and to convey information concerning alternatives to the surrender of firearms to the City.” (*Id.* ¶ 8.) The Office of the Mayor deferred to the LAPD, and Detective Tompkins of the LAPD “ha[d] [as of the filing of the complaint] declined to permit or authorize access, stating that the only members of the public permitted entry are those who are arriving with one or more firearms to transfer or surrender.” (*Id.*) Boyer alleges that this statement “[wa]s not precisely true, as the Department also permits entry to elected and appointed officials, the invitees and guests of such officials, and media representatives.” (*Id.*) Boyer alleges that “Detective Tompkins . . . further conveyed that [they] and other members of the public are prohibited from adjacent sidewalk areas.” (*Id.*) Although Tompkins claimed that signs would be permissible, Boyer alleges that his “past experience is to the contrary,” as he was previously convicted of a misdemeanor under the general “sign ordinance” provisions of the Los Angeles Municipal Code based only on having a sign at the 2010 Hollywood Gun Buy Back event. (*Id.*) Boyer alleges that Tompkins informed the Sons of Liberty that “there is no written policy for the conduct of the Gun Buy Back event, and that operation of the event lies entirely within the discretion of the [LAPD].” (*Id.*)

On May 9, 2012, Boyer filed an ex parte application for a temporary restraining order in connection with the City’s May 12, 2012 Gun Buy Back Event. (Docket No. 4.) In his application, Boyer sought an order permitting the following:

- (1) That [the Sons of Liberty] may be present at the event site(s) and enter the event site(s) for purposes of communicating with other attendees/participants;
- (2) That [the Sons of Liberty] be permitted to speak with other attendees/participants at the event site(s) who are willing to hear from plaintiffs concerning the wisdom or legality of the Gun Buy Back event;
- (3) That [the Sons of Liberty] be permitted to communicate with other attendees/participants who are willing to hear from plaintiffs concerning alternatives to turning in firearms to the City, including opportunities to dispose of firearms through lawful sale through a licensed firearms dealer in compliance with governing state and federal law;
- (4) That [the Sons of Liberty] be permitted to erect and display signs at the event site(s) conveying plaintiff’s point of view and communicating to

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attendees/participants and others then present concerning alternatives to participation on the Gun Buy Back;

(5) That the communication of [the Sons of Liberty's] views to other willing attendees/participants be permitted prior to those attendees/participants surrendering firearms to the City.

(App. at 2.) Boyer averred that the Sons of Liberty sought only "a meaningful opportunity to convey, to any willing listener, [their] point of view concerning the Gun Buy Back and alternative means by which attendees can safely and lawfully dispose of unwanted firearms." (Compl. ¶ 8.)

In their opposition to the application, the City averred that it "[would] not prevent [the Sons of Liberty] from expressing and communicating their views in areas that have not been restricted to those persons who are turning in firearms and City personnel involved in the operation of the program." (Docket No. 10, TRO-Opp. at 2.) Rather, the City characterized the dispute as "center[ing] on [the Sons of Liberty's] demand for access to the area immediate to where the firearms are being removed from the vehicles and rendered safe by police officers." (*Id.*) According to the City, at previous Gun Buy Back events, people have turned in defective and unsafe firearms, unstable ammunition, and even explosives. (Docket No. 10-1, Declaration of Richard Tompkins ("Tompkins Decl.") ¶ 9.) Accordingly, "for obvious safety reasons," the City argued that "access to the area where firearms are being surrendered must be restricted." (TRO-Opp. at 3.)

Pointing to the group's website, the City characterized the Sons of Liberty's "true motivation [as] not to protect their rights, but to interfere with the operation of the program and 'slow down the line to a crawl, [so that] people will leave to go to the gun stores!'" (*Id.* at 3) (citing Declaration of Carlos De La Guerra (De La Guerra Decl.), Ex. 1[Sons of Liberty News].) The City noted that the Sons of Liberty's website solicits "ropers," "hagglers" and "blockers" whose "sole purpose is to cause lengthy delays in hopes of persuading program participants to take their guns to gun stores associated with plaintiffs." (*Id.*) "Ropers" are paid "depending on the 'deal' the gun is purchased for" and the Sons of Liberty "want to make sure that every roper gets a 'pick of the litter' gun for their work." (*Id.*) The City claimed that, "as further evidence that the Sons of Liberty are merely seeking to redirect program participants to gun stores, the group is soliciting investors to buy up to \$240,000 worth of guns to resell for \$480,000-\$720,000." (*Id.*)

The City averred that six locations in Los Angeles had been selected for the May 12,

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2012 Gun Buy Back event. (Tompkins Decl. ¶¶ 5–6.) One was to be conducted on state-owned property, four were to be conducted on private property, and the sixth was to be held at the Los Angeles Fire Department training center, which, although public property, is limited to City personnel and persons there for Fire Department business purposes. (De La Guerra Decl. ¶ 5.) According to Detective Tompkins and the City Attorney’s office, the Sons of Liberty were to have the opportunity to exercise their First Amendment rights on the public sidewalks or other public areas immediately adjacent to the Gun Buy Back event locations, subject only to “very reasonable” restrictions. (Tompkins Decl. ¶ 11.) In particular, the City Attorney’s office had informed the Sons of Liberty, through their counsel, that they would be able to [1] verbally express their views; [2] carry signs or wear signs on their person; [3] wear t-shirts or other clothing with slogans containing their message; and [4] hand out flyers to pedestrians or persons in vehicles in line to enter the Gun Buy Back Event locations. (*Id.*; Docket No. 10-3, Declaration of Debra L. Gonzales (“Gonzales Decl.”) ¶ 4.) According to Tompkins, the only limitations on the Sons of Liberty were that they would not be able to [1] enter the roadway and create a traffic hazard; [2] impede the movement of vehicles in line to enter the gun buyback program locations; or [3] violate any Los Angeles municipal code provisions or state laws such as the California Penal or Vehicle Codes. (*Id.*)

C. THE COURT’S MAY 11, 2012 ORDER DENYING BOYER’S TRO

On May 11, 2012, the Court denied Boyer’s application for a temporary restraining order, finding that Boyer could not establish a likelihood of success on the merits. (May 11, 2012 Order at 5–7.) In particular, the Court found that, “[i]n light of the City’s guarantee that [the Sons of Liberty] and other citizens will be permitted to express their views on sidewalks and other areas adjacent to the Gun Buy Back events, . . . the restrictions placed on entrance to the actual buyback events are clearly consistent with the Supreme Court’s First Amendment jurisprudence.” (*Id.* at 5.) That ruling is discussed in more detail below.

Since the May 12, 2012 Gun Buy Back event, Boyer has not filed an amended complaint or provided any evidence relating to any unconstitutional conduct undertaken by the City in connection with that event.

**III.
DISCUSSION**

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A. LEGAL STANDARD GOVERNING RULE 12(B)(6)

A complaint may be dismissed for failure to state a claim upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6). On a motion to dismiss under Rule 12(b)(6), a court must accept as true all factual allegations pleaded in the complaint and must construe them “in the light most favorable to the nonmoving party.” Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 337–38 (9th Cir. 1996); see also Stoner v. Santa Clara County Office of Educ., 502 F.3d 1116, 1120–21 (9th Cir. 2007). Dismissal under Rule 12(b)(6) may be based on either “(1) lack of a cognizable legal theory or (2) insufficient facts under a cognizable legal claim.” SmileCare Dental Group v. Delta Dental Plan of Calif., Inc., 88 F.3d 780, 783 (9th Cir. 1996).

Under Federal Rule of Civil Procedure 8(a)(2), a complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The Supreme Court has interpreted this rule to require that a complaint “contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct,” the complaint has not established that the pleader is entitled to relief. Id. at 1950.

Although a complaint generally need not contain detailed factual allegations, “a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” Twombly, 550 U.S. at 555 (citation, alteration, and internal quotation marks omitted). Similarly, a court need not “accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001). In other words, “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.” Iqbal, 129 S. Ct. at 1949–50; see also Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003).

B. FIRST AMENDMENT CLAIM

The City contends that Boyer’s sole claim for relief, for violations of his and the Sons of

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Liberty's First Amendment rights under 42 U.S.C. § 1983, is inadequately pleaded and has already been rejected by this Court's May 11, 2012 Order.

1. LEGAL STANDARDS GOVERNING FORUM ANALYSIS

"[T]he [Supreme] Court has adopted a forum analysis as a means of determining when the Government's interest in limiting the use of its property to its intended purpose outweighs the interest of those wishing to use the property for other purposes." Cornelius v. NAACP Legal Defense and Educational Fund, Inc., 472 U.S. 788, 800 (1985). Government-owned property may be designated "as either a traditional public forum, a designated public forum, or a nonpublic forum." International Society for Krishna Consciousness, Inc. v. Lee, 505 U.S. 672, 694 (1992). "The mere physical characteristics of the property cannot dictate forum analysis." United States v. Kokinda, 497 U.S. 720, 727 (1990). Rather, the Supreme Court has looked to such factors as whether or not the forum has been traditionally made available for speech, the primary purpose of the forum, and the extent to which speech is compatible with the forum's usual functioning. Id.

Traditional public forums are limited to "public property which have as a principal purpose the free exchange of ideas," as "evidenced by a long-standing historical practice of permitting speech." Krishna Consciousness, 505 U.S. at 694 (internal citations and quotation marks omitted). Designated forums "consist of property which the government intends to open for public discourse." Id. "All other types of property are, in the Court's view, nonpublic forums (in other words, not public forums), and government-imposed restrictions of speech in these places will be upheld so long as reasonable and viewpoint neutral." Id. Indeed, the First Amendment "does not guarantee access to property simply because it is owned or controlled by the government." Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 46 (1983) (quoting United States Postal Service v. Council of Greenburgh Civic Associations, 453 U.S. 114, 129 (1981)). Rather, "the state may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view." Id. "[T]he State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated." Greenburgh Civic Associations, 453 U.S. at 129–130.

2. APPLICATION TO THE COMPLAINT

In its May 11, 2012 Order denying Boyer's application for a temporary restraining order, the Court examined the evidence presented by the parties and determined that Boyer had not

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presented sufficient evidence to demonstrate that his and the Sons of Liberty's constitutional rights were likely to be violated at the City's May 12, 2012 Gun Buy Back event:

The Court concludes that the application should be denied because Plaintiffs cannot establish a likelihood of success on the merits. In light of the City's guarantee that Plaintiffs and other citizens will be permitted to express their views on sidewalks and other areas adjacent to the gun buyback events, the Court finds that the restrictions placed on entrance to the actual buyback events are clearly consistent with the Supreme Court's First Amendment jurisprudence.

...

In this case, Plaintiffs have presented no evidence that any of the six locations being used for gun buyback events have ever had as their "principle purpose the free exchange of ideas," or that the government intends to open any of these forums for public discourse. The only evidence offered on the matter is the City's, which avers that the programs will take place at six locations around the City of Los Angeles: one will be conducted on state-owned property, four will be conducted on private property, and the sixth will be held at the Los Angeles Fire Department training center, which, although public property, is limited to City personnel and persons there for Fire Department business purposes. (Tompkins Decl. ¶ 5; De La Guerra Decl. ¶ 5.) The City avers, and Plaintiffs do not contradict, that the sole purpose of the gun buyback program is for the City to receive voluntarily surrendered firearms in exchange for a gift card. The Court thus finds that these locations all constitute non-public forums.

Accordingly, the restrictions placed on Plaintiffs' expressive activity on the property where the gun buyback events are being held are constitutional so long as they are reasonable and "viewpoint neutral." The City contends that it has a need to restrict access to the area where firearms are actually being surrendered "in order to ensure the safety of the citizens participating in the gun buyback program and the City employees and officials staffing the event." (Opp. at 5; Tompkins Decl. ¶ 9.) At previous buyback events, according to the City, people have turned in defective and unsafe firearms, unstable ammunition and even explosives. (Tompkins Decl. ¶ 9.) Accordingly, "for obvious safety reasons," the City contends that "access to the area where the firearms are being surrendered must be restricted." (Opp. at 3.) The City also asserts an interest in "limiting its potential liability for any injuries to persons it invites onto the properties." (*Id.* at 5; Tompkins Decl. ¶ 8.) Thus, the City contends

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that it needs to “strictly limit entry to those individuals who want to participate in the program and those few others that the City has determined are necessary for the successful operation of the program.” (*Id.*)

The Court finds that these restrictions are both reasonable and neutral as to the speakers’ viewpoint. The City is merely restricting access to the buyback events based on whether or not a person plans to participate in the exchange program. Plaintiffs have presented no evidence that the City has ever discriminated, or plans to discriminate on the basis of the content of their or any other citizens’ speech. Given that the City has a substantial interest in ensuring that these events are run safely and smoothly, particularly in light of the weapons that are necessarily handled at such events, restricting access to those participating is reasonable.

Moreover, although the requirement that the government “leave open ample alternative channels for communication” is applicable only to public fora, *Kokinda*, 497 U.S. at 738, the City has satisfied that requirement here. The City has communicated to Plaintiffs that they will have the opportunity to exercise their First Amendment rights on the public sidewalks or other public areas immediately adjacent to the gun buyback locations. In particular, Plaintiffs will be able to [1] verbally express their views; [2] carry signs or wear signs on their person; [3] wear t-shirts or other clothing with slogans containing their message; and [4] hand out flyers to pedestrians or persons in vehicles in line to enter the gun buyback locations. (Tompkins Decl. ¶ 11; Gonzales Decl. ¶ 4.)

Accordingly, based on the evidence before the Court, and a review of the relevant authorities, the Court finds that the Plaintiffs cannot demonstrate a likelihood of success on the merits. The application is therefore **DENIED**.

(May 11, 2012 Order at 6–7.)

Although the complaint recites facts relating to the City’s previous treatment of the Sons of Liberty, Boyer asserts only a single cause of action for violations of 42 U.S.C. § 1983, and seeks only prospective relief. In particular, Boyer asks for: [1] a declaration of his and the Sons of Liberty’s right to be “granted access to and meaningful participation in current and future Gun Buy Back events for purposes of expressing their views”; and [2] a temporary restraining order, preliminary injunction and a permanent injunction, all “enjoining and requiring [the City], and its agents, employees and all persons acting under, in concert with, or for [the City]:

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(1) to allow [the Sons of Liberty] to be present at the Gun Buy Back event sites, to enter those sites on foot, by wheelchair, or by other means apart from a motor vehicle, and to be present without [the Sons of Liberty] themselves possessing or surrendering a firearm;

(2) to allow [the Sons of Liberty's] presence at a place and in a manner that provides opportunity for [them] to speak with and communicate their views to other attendees prior to those attendees surrendering firearms;

(3) to maintain possession of surrendered firearms and not to destroy them and to dispose of them only in the manner authorized by the Los Angeles Municipal Code for the disposition of 'surplus City property';

(4) to determine whether any surrendered firearms may be evidence of a criminal act and to submit such evidence to the appropriate prosecutorial authority for a determination whether a prosecution should be pursued; and

(5) to permit [the Sons of Liberty] access to press conferences and other media opportunities relating to Gun Buy Back events on a par with that access provided to other members of the public and press."

(Compl. at 8–9.)

In the absence of any other formal causes of action, the Court is asked to pass upon this prayer for relief solely in the context of the allegations contained in the complaint. Indeed, the Court has already considered and rejected these claims in light of the City's May 12, 2012 Gun Buy Back event, the only such event referenced in the complaint. Since the issuance of the Court's order denying his application for a temporary restraining order, Boyer has not sought to amend his complaint, or to present any evidence related to the May 12, 2012 or any other future Gun Buy Back event. However, to secure the prospective declaratory and/or injunctive relief he seeks, Boyer must demonstrate the existence of an "actual controversy," American States Ins. Co. v. Kearns, 15 F.3d 142, 143 (9th Cir. 1994), or the threat of "irreparable injury" to his or his organization's constitutional rights, Monsanto Co. v. Geertson Seed Farms, 130 S.Ct. 2743, 2756 (2010). Because the City's May 12, 2012 Gun Buy Back Event has already been held, and because Boyer has failed to make any allegations concerning the City's conduct at that event, the Court has no basis on which to conclude that Boyer has stated a plausible claim entitling him to the prospective relief sought.

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Nor do vague references to potential future illegality in the complaint and in Boyer's opposition change that analysis. Although the City frames this as a question of ripeness, the Court finds that issue is more properly considered under the Ninth Circuit's "mootness" case law.

"The doctrine of mootness, which is embedded in Article III's case or controversy requirement, requires that an actual, ongoing controversy exist at all stages of federal court proceedings." Pitts v. Terrible Herbst, Inc., 653 F.3d 1081, 1086 (9th Cir. 2011). "A claim is moot if it has lost its character as a present, live controversy." Am. Rivers v. Nat'l Marine Fisheries Serv., 126 F.3d 1118, 1123 (9th Cir. 1997). "If an event occurs that prevents the court from granting effective relief, the claim is moot and must be dismissed." Id.

As discussed above, the allegations and relief prayed for in the complaint relate solely to the May 12, 2012 Gun Buy Back event, which has already passed without any allegation of unconstitutional conduct. Although Boyer and the Sons of Liberty may at some future time seek to complain of the City's conduct with respect to future Gun Buy Back events, the controversy raised by the present complaint has already been resolved. Moreover, the Court finds that the "capable of repetition, yet evading review" exception to the mootness doctrine is inapplicable. See Vegas Diamond Properties, LLC v. F.D.I.C., 669 F.3d 933, 936–937 (9th Cir. 2012). "[T]he capable-of-repetition doctrine applies only in exceptional situations, and generally only where the named plaintiff can make a reasonable showing that he will again be subjected to the alleged illegality." Id. (quoting Los Angeles v. Lyons, 461 U.S. 95, 109 (1983)). First, in light of Boyer's failure to allege a plausible claim for relief in connection with the one Gun Buy Back event at issue, or to make any concrete allegations of potential illegality with respect to future Gun Buy Back events, the Court cannot conclude that any purported injury is "capable of repetition."

Second, because any such future action would not "evade review," the exception is inapplicable to the present facts. Dismissal of the instant action will not preclude Boyer from bringing another action based on the City's future illegal conduct.

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Accordingly, the complaint is **DISMISSED without leave to amend.**

**IV.
CONCLUSION**

Based on the foregoing discussion, the motion is **GRANTED** and the complaint is **DISMISSED without leave to amend.** The hearing on the motion presently scheduled for August 27, 2012 is **VACATED.**

IT IS SO ORDERED.