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Defendants also mischaracterize when Plaintiffs were deprived of their protected interest in their firearms rights, guaranteed by the Second Amendment. Plaintiffs alleged they were deprived of their fundamental Second Amendment rights by operation of Section 6105 at the moment they were committed under Section 302, and Defendants reported that commitment as a disqualifying event, not when they were (much) later unable to purchase a firearm.

Defendants erroneously claim *In re Keyes*, 83 A.3d 1016 (Pa. Super. 2013) supports their argument that federal law provides a mechanism for removing a federal disability (18 U.S.C. § 925(c)). Reply at 5 n.4. As the court there explicitly noted, however, restoration under Section 925(c) is not available because it has never been funded by Congress. *In re Keyes*, 83 A.3d at 1029. Similarly, Defendants’ argument that an expungement under Pennsylvania law “lifts any ban against possessing a firearm under the federal Gun Control Act,” Reply at 5 n.4, finds no support in *In re Keyes*. To the contrary, *In re Keyes* states “[b]ecause [Plaintiffs’ Section 302 and 303] commitments remained on appellant’s record, although he could again possess a firearm under Pennsylvania law, he was still barred from possessing a firearm under the federal Gun Control Act.” 83 A.3d at 1020. The court never addressed whether an expungement of a Section 302 commitment suffices to lift the federal disability.

Defendants also rely upon dicta in *United States v. Rehlander*, 666 F.3d 45 (1st Cir. 2012), for the argument that a “ban on firearms purchase is not considered a permanent deprivation of the right to bear arms where there exists a meaningful way to recapture that right.” Reply at 2, *citing Rehlander*, 666 F.3d at 47. The *Rehlander* court expressly reserved judgment, however, on the validity of a temporary deprivation of Second Amendment rights: “Congress might well be able to impose a temporary ban on firearms possession or perhaps even a permanent one if procedures existed for later restoring gun rights. Since much might depend on the terms, it is unwise to say more about such matters absent a concrete case and adequate briefing.” *Id.* at 49.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of February, 2017, copies of this Motion for Permission to File Sur-reply, with attachment, were served, via electronic delivery through the Court's ECF filing system, which will distribute copies to all counsel of record.

/s/ Jonathan S. Goldstein

Jonathan

S.

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