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May 25, 2017

Judge Edward J. Davila  
United States District Court  
280 S. First Street, Courtroom 4 - 5th Floor  
San Jose, CA 95113

Re: RODRIGUEZ v. CITY OF SAN JOSE  
Court Case Number: 5:15-CV-03698-EJD

Dear Judge Davila:

In accordance with the Court's Order of May 16, 2017 (Doc. 47), Defendant City of San Jose submits this letter brief regarding the applicability to the subject case of the Supreme Court's decision in *Nelson v. Colorado*.

In *Nelson v. Colorado*, 581 U.S. \_\_\_\_ (April 19, 2017) two individuals were convicted of crimes and were ordered to pay court costs, fees and restitution. In both cases, their convictions were subsequently reversed and invalidated, and both parties sought return of money that had been paid pursuant to the convictions. The Colorado Supreme Court determined that a state procedure was the exclusive process for obtaining refunds. That process required the parties seeking reimbursement to establish, by clear and convincing evidence, actual innocence of the crimes alleged. Since plaintiffs failed to employ that process, the court lacked authority to return the money. The Colorado court concluded that the process available to parties seeking reimbursement was sufficient to satisfy notions of due process.

The Supreme Court determined that such procedure did not comport with due process requirements because the statutory process improperly saddled plaintiffs with the burden of establishing actual innocence. Since the money belonged to plaintiffs, and since plaintiffs were presumed innocent of the crimes they were charged with, but not convicted of, the process for return of such funds could not impose any proof burden on these parties. In conclusion, the Court stated that "to comport with due process, a State may not impose anything more than minimal procedures on the refund of exactions dependent upon a conviction subsequently invalidated."

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Obviously, the instant case does not involve payments of money pursuant to a conviction that is later invalidated. So the precise ruling of *Nelson* is not at all applicable to the facts of the case before the Court. In general, the *Nelson* case does reiterate the concept that property cannot be taken by the government without due process, and the process that is due an individual always depends on the specific circumstances relating to the deprivation of that property.

In the current context – determining whether to return firearms to a person who has been taken into custody pursuant to Welfare and Institutions Code Section 5150 – the applicable statutory procedure under Section 8102 of that Code, **does** provide due process to the person seeking return of the property. In this context, the statute requires the government to bear the burden of establishing that it would be dangerous to return the firearm confiscated. *City of San Diego v. Boggess*, 216 Cal.App.4<sup>th</sup> 1494 (2013); *Rupf v. Yan*, 85 Cal.App.4<sup>th</sup> 411 (2000); *People v. Keil*, 161 Cal.App.4<sup>th</sup> 34 (2008).

Thus, to the extent that *Nelson* even applies to the current situation, it has already been determined that Section 8102 satisfies the requirements of due process, since the statutory process requires the confiscating agency to initiate the proceedings and to bear the burden of proof on the danger issue. See *Boggess*, *Rupf*, *Keil*, *supra*. In short, the *Nelson* case does not provide any support for Rodriguez's claims.

Additionally, the *Nelson* case is about money. The property at stake was purely sums of money that criminal defendants had paid and wanted back. The subject case implicates safety concerns. The property sought in this case is firearms, which are potentially dangerous, and the case involves the return of such property to persons who have, or live with persons who have, mental conditions. Thus the property at stake in the instant case is far different from that in *Nelson*, and the interests of the government are thus far more important than those in *Nelson*, leading to a different analysis when evaluating the interests for purposes of a procedural due process analysis.

Finally, it should be noted that Plaintiff, in the instant case, declined to work out a resolution that would have restored to her the *value* of the weapons. Plaintiff was interested only in the weapons themselves, relying on Second Amendment arguments. *Nelson* involves procedural due process issues only, and in this case, Plaintiff received a great deal of "process," including proposals to obtain money for the value of the weapons, but chose instead to assert perceived Second Amendment rights.

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In conclusion, for purposes of this letter brief, the only issue is the applicability of *Nelson*. For the reasons set forth above, *Nelson* is not applicable and does not affect the issues that have already been raised and considered by the court.

Very truly yours,

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