

September 28, 2021

Molly C. Dwyer
Clerk of the Court
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: Jonah Martinez, et al v. Alex Villanueva, et al, No. 20-56233
Notice of Supplemental Authorities
Pursuant to FRAP 28(j) and Circuit Rule 28-6

Dear Hon. Clerk Dwyer:

The briefing in this case was completed on May 26, 2021, with the filing of the Reply Brief. Since then, this Court has issued three additional decisions that bear upon the issue in this case of whether Appellants' claim is moot, and specifically whether the "voluntary cessation" doctrine applies to maintain a live justiciable controversy over their claim that the challenged public health directives violated the Second Amendment even though those directives were lifted after this litigation ensued. Appellants contend that it does. Opening Brf. 19-23; Reply Brf. 25-26. Appellees contend that it does not. Answer Brf. 30-35.

The three new cases that speak further to this question are *Brach v. Newsom*, 6 F.4th 904 (2021), published July 23, 2021 (*Brach*), *Ranchers Cattlemen Action Legal Fund United Stockgrowers of America v. Vilask*, 6 F.4th 983 (2021), published July 27, 2021 (*Vilask*), and *Cooper v. Newsom*, __ F.4th __ (2021), 2021 WL 4203343, published September 16, 2021 (*Cooper*).

The *Brach* court explained that the government cannot carry "its 'formidable burden' under the voluntary cessation doctrine" when it has a "track record of 'moving the goalposts,'" it retains "broad 'authority to reinstate those heightened restrictions at any time,'" and it "fail[s] to expressly foreswear ever" reimposing such restrictions. *Brach*, 6 F.4th at 920 (quoting *Tandon v. Newsom*, __ U.S. __, 141 S.Ct. 1294, 1297 (2021)). In *Vilask*, the Court emphasized that the government must "demonstrate that the change in its behavior is entrenched or permanent." *Vilask*, 6 F.4th at 991 (quoting *Fikre v. FBI*, 904 F.3d 1033, 1037 (9th Cir. 2018)). Lastly, in *Cooper*, the Court applied

the voluntary cessation doctrine to find a challenge to “California’s allegedly unconstitutional method of execution” not moot despite a cessation of executions, because nothing prevents the current or a future Governor from later “proceeding with preparations for executions” and “[i]t is thus entirely possible that in the future, defendants will seek to resume executions in California” under similar protocols. *Cooper*, 2021 WL 4203343 at *4.

Respectfully submitted,

/s/ Raymond M. DiGuiseppe

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