



THE DIGUISEPPE LAW FIRM, P.C.

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December 8, 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
Response to Defendants' Notice of Supplemental Authorities
Pursuant to FRAP 28(j) and Circuit Rule 28-6

Dear Hon. Clerk Dwyer:

Please accept this letter as Plaintiffs' response to Defendants' citation of *Duncan v. Bonta*, __ F.4th __ (9th Cir. 2021), 2021 WL 5577267, and *United States v. Olsen*, 995 F.3d 683 (9th Cir. 2021) as ostensible support for the district court's judgment below.

At the core of the majority's opinion upholding the magazine ban in *Duncan* was the government's claim that the ban combats gun violence, particularly mass shootings. *Duncan*, 2021 WL 5577267 at *4, 16, 17. Defendants make no claim that the shutdown orders at issue had *anything* to do with combatting gun violence. Equally crucial to the *Duncan* majority's holding was its finding that the magazine ban "has no effect whatsoever" on the acquisition, possession, or use of firearms or ammunition. *Id.* at *11-12. The shutdown orders by stark contrast directly and severely affected these core rights, "implicat[ing] a core Second Amendment right and plac[ing] a substantial burden on that right," which compels strict scrutiny. *Id.* at *11. Indeed, the shutdowns were tantamount to "a destruction of the Second Amendment right" that the *Duncan* majority reaffirmed is unconstitutional under any standard of scrutiny. *Id.* at *13.



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Even under “intermediate scrutiny” as articulated in *Duncan*, the shutdown orders could not survive when there has been *no* showing of any “reasonable fit” between the challenged law and the claimed objective. *Duncan*, 2021 WL 5577267 at *15. The shutdowns went far beyond anything that could be considered “reasonable restrictions on the time, place, or manner of exercising the Second Amendment right to keep and bear arms,” which must “leave open *ample* alternative means of exercising that right” to survive such scrutiny. *Id.* at *20 (Graber, J., concurring) (*italics added*).

Defendants’ citation to *Olsen* is also unavailing. *Olsen* construed the Speedy Trial Act, which “includes a long and detailed list” of statutory exceptions permitting limitations of the sort at issue there, *Olsen*, 995 F.3d at 686, not an enumerated constitutional right for which no exceptions of the sort at issue exist. Further, Defendants’ citation to *Olsen* is improper as untimely since they failed to cite it in their Answer Brief.

Respectfully submitted,

/s/ Raymond M. DiGuiseppe

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