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Office of the Clerk  
U.S. Court of Appeals for the Seventh Circuit  
Everett McKinley Dirksen United States Courthouse  
219 S. Dearborn Street  
Room 2722  
Chicago, IL 60604

**RE: *Herrera v. Raoul et al.*, No. 23-1793 –  
Rule 28(j) Supplemental Authority**

Dear Mr. Conway:

Plaintiff-Appellant Dr. Javier Herrera writes to alert this Court to the Ninth Circuit’s recent decision in *Teter v. Lopez*, No. 20-15948, 2023 WL 5008203 (9th Cir. Aug. 7, 2023). *Teter* rejects at least three of the governments’ contentions.

**First**, *Teter* “reject[s]” the contention “that the purported ‘dangerous and unusual’ nature of [the regulated arms] means they are not ‘arms.’” 2023 WL 5008203, at \*9; *contra* Cnty. Reply 7; State Reply 5. The Court reasoned that “*Heller* itself stated that the relevance of a weapon’s dangerous and unusual character lies in the ‘*historical tradition* of prohibiting the carrying of dangerous and unusual weapons.’” 2023 WL 5008203, at \*9. Whether an arm is “‘dangerous and unusual’ is a contention as to which [the State] bears the burden of proof in the second prong of the *Bruen* analysis.” *Id.*

**Second**, *Teter* rejects the governments’ contention that commonality turns on whether the regulated arms are commonly used in self-defense encounters. State Br.24-26; City Br.18; County Br.19-20. Instead, the question is “‘whether the weapon is commonly *possessed* by law-abiding citizens for lawful purposes.’” 2023 WL 5008203, at \*9 (emphasis added); *id.* (“commonly owned”); *id.* (“commonly owned”); *id.* (“typically possessed”).

**Third**, *Teter* rejects the governments’ contention that 19th-century regulations of arms like bowie knives are analogous to outright bans on possession. *E.g.*, State Br.34-36. “[T]he ‘how’ of the proffered state statutes is different—they regulate different conduct.” *Teter*, 2023 WL 5008203, at \*11. “The vast majority of the statutes cited ... did not ban possession of knives; they regulated only their *carry*.” *Id.*; *id.* at \*11-12. “Many of these statutes excepted the carry of prohibited weapons for self-defense, for ‘lawful

purposes,' while traveling, or in their owners' homes.'" *Id.* at \*11. *Teter's* analysis of the 19th-century statutes mirrors *Dr. Herrera's*. *Herrera Br.* 30-33.

Dated: August 8, 2023

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Respectfully submitted,

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### **CERTIFICATE OF COMPLIANCE**

This letter complies with Rule 28(j) because its body contains 297 words.

Dated: August 8, 2023

/s/ Gilbert C. Dickey

### **CERTIFICATE OF SERVICE**

I filed a true and correct copy of this letter with the Clerk of this Court via the CM/ECF system, which will notify all counsel.

Dated: August 8, 2023

/s/ Gilbert C. Dickey