

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION**

**JAMES D'CRUZ, ANDREW PAYNE,
and NATIONAL RIFLE ASSOCIATION
OF AMERICA, INC.,**

Plaintiffs,

vs.

**BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES;
KENNETH E. MELSON, in his official
capacity as Acting Director of the Bureau of
Alcohol, Tobacco, Firearms and Explosives;
and ERIC H. HOLDER, Jr., in his official
capacity as Attorney General of the United
States,**

Defendants.

Case No. 5:10-cv-00140-C

**DEFENDANTS' MOTION TO DISMISS OR, IN THE
ALTERNATIVE, FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 12(b)(1), 12(b)(6), and 56, Defendants hereby move this Court to dismiss Plaintiffs' Amended Complaint for Declaratory Judgment and Injunctive Relief or, in the alternative, to enter summary judgment for Defendants. Defendants respectfully request oral argument on this motion.

In accordance with Local Civil Rule 56.5, this motion is accompanied by a brief that sets forth the argument and authorities on which Defendants rely in support of this motion. A proposed order also accompanies this motion.

SUMMARY

Defendants move this Court to dismiss this case under Fed. R. Civ. P. 12(b)(1) and 12(b)(6). In the alternative, Defendants move for summary judgment in their favor because Plaintiffs are challenging “presumptively lawful” restrictions that “impos[e] conditions and qualifications on the commercial sale of arms,” as described in District of Columbia v. Heller, 128 S. Ct. 2783, 2817 (2008). These laws do not preclude conduct that is protected by the Second Amendment and would pass constitutional muster in any event. Accordingly, the Court should dismiss the case or enter summary judgment for Defendants.

Dated: December 22, 2010

Respectfully submitted,

TONY WEST
Assistant Attorney General

JAMES T. JACKS
United States Attorney

JOHN R. PARKER
Assistant United States Attorney

/s/ Daniel Riess
SANDRA M. SCHRAIBMAN
Assistant Director
DANIEL RIESS (Texas Bar No. 24037359)
Trial Attorney
U.S. Department of Justice
Civil Division, Rm. 6122
20 Massachusetts Avenue, NW
Washington, D.C. 20530
Telephone: (202) 353-3098
Fax: (202) 616-8460
Email: Daniel.Riess@usdoj.gov
Attorneys for Defendants