

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

**JAMES D’CRUZ; ANDREW PAYNE;
NATIONAL RIFLE ASSOCIATION OF
AMERICA, INC.,**

Plaintiffs,

v.

**THE 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; ERIC
HOLDER, in his official capacity as
Attorney General of the United States,**

Defendants.

**Case No. 5:10-cv-00140-C
Judge Sam R. Cummings**

**PLAINTIFFS’ UNOPPOSED MOTION TO CLARIFY AND SET PAGE LIMITS FOR
SUMMARY JUDGMENT BRIEFING**

Plaintiffs James D’Cruz, Andrew Payne, and the National Rifle Association of America, Inc., hereby respectfully move the Court to clarify the page limits applicable to their summary judgment briefing and to order that Plaintiffs may file a single omnibus brief of not more than 75 pages. In support thereof, Plaintiffs respectfully state:

1. On November 8, 2010, the Court established a briefing schedule whereby Defendants were to first file a “dispositive motion,” Plaintiffs were then to filed a “response to Defendants’ dispositive motion” and a “motion for summary judgment,” Defendants’ were then to file a “reply in support of dispositive motion” and a “response to Plaintiffs’ motion for summary judgment,” and Plaintiffs were then to file a “reply in support of motion for summary judgment.”

Doc. 17 at 1. The schedule for these filings has twice been extended by order of the Court. *See* Doc. 20, 27.

2. Pursuant to the latest scheduling order, on December 22, 2010, Defendants submitted a Motion to Dismiss or, in the Alternative, for Summary Judgment. *See* Doc. 21. Pursuant to Local Rule 56.5(b), Defendants' brief in support of the motion was 49 pages in length.

3. Pursuant to this Court's scheduling orders, Docs. 17, 27, and Local Rule 56.5(b), on January 28, 2011, Plaintiffs are entitled to file (i) a brief, not to exceed 50 pages in length, in response to Defendants' summary judgment motion, and (ii) a brief, not to exceed 50 pages in length, in support of Plaintiffs' forthcoming summary judgment motion.

4. Plaintiffs believe that these two separate briefs will contain a significant amount of overlapping material, both in terms of background and legal argumentation. Therefore, to streamline the briefing, and to reduce the burden on the parties and the Court, Plaintiffs respectfully request that the Court permit Plaintiffs to file, on January 28, 2011, a single, omnibus brief of not more than 75 pages. This brief will incorporate both Plaintiffs' response to Defendants' summary judgment motion and Plaintiffs' brief in support of their summary judgment motion.

5. Counsel for Plaintiffs has conferred with counsel for Defendants regarding this motion, and Defendants consent to this motion.

CONCLUSION

Wherefore, Plaintiffs respectfully request that the Court enter an order establishing that Plaintiffs may, on January 28, 2011, file an omnibus summary judgment brief not to exceed 75 pages in length.

Dated January 26, 2011

Respectfully submitted,

Fernando M. Bustos
State Bar No. 24001819
LAW OFFICES OF FERNANDO M. BUSTOS, P.C.
P.O. Box 1980
Lubbock, TX 79408-1980
Tel: (806) 780-3976
Fax: (806) 780-3800
Email: fbustos@bustoslawfirm.com

s/ Charles J. Cooper
Charles J. Cooper*
David H. Thompson*
Jesse Panuccio*
Pete Patterson*
COOPER & KIRK, PLLC
1523 New Hampshire Ave., NW
Washington, D.C. 20036
Tel: (202) 220-9600
Fax: (202) 220-9601
Email: ccooper@cooperkirk.com
*Admitted *pro hac vice*.

Counsel for Plaintiffs

CERTIFICATE OF CONFERENCE

Counsel for Plaintiffs has conferred with counsel for Defendants, Mr. Daniel Riess, and Defendants consent to this motion.

s/ Charles J. Cooper _____
Charles J. Cooper

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2011, a true and correct copy of the foregoing document was served by first-class United States mail on:

Daniel Riess
Trial Attorney
Federal Programs Branch
Civil Division
United States Department of Justice
20 Massachusetts Ave., N.W.
Washington, D.C. 20530

John Parker
Assistant United States Attorney
Office of the United States Attorney
for the Northern District of Texas
1100 Commerce Street, 3rd Floor
Dallas, TX 75242

s/ Charles J. Cooper _____
Charles J. Cooper