

**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.)

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

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.)

**PLAINTIFFS’ MOTION TO AMEND THE COMPLAINT,
PLAINTIFF JAMES D’CRUZ’S MOTION TO WITHDRAW AS PARTY PLAINTIFF,
AND NON-PARTIES REBEKAH JENNINGS’ AND BRENNAN HARMON’S MOTION
TO JOIN AS PARTY-PLAINTIFFS**

Plaintiffs Andrew Payne and the National Rifle Association of America, Inc. (“NRA”), hereby respectfully move the Court to permit the filing of a Second Amended Complaint. Plaintiff James D’Cruz hereby respectfully moves the Court to permit him to withdraw as a party-plaintiff. And non-parties Rebekah Jennings and Brennan Harmon respectfully move the Court to permit them to join the lawsuit as party-plaintiffs. In support thereof, these parties respectfully state:

1. Plaintiff James D’Cruz filed the original complaint in this case on September 8, 2010. *See* Doc. 1. On October 21, 2010, two additional plaintiffs—Andrew Payne and the NRA—were added to the case through an Amended Complaint. *See* Doc. 14.

2. At the time of the filing of the Complaint and the Amended Complaint, Mr. D'Cruz was living in Lubbock, Texas. Recently, however, he has relocated to Titusville, Florida, where he currently lives with his family. Because he is no longer living in Texas, Mr. D'Cruz no longer wishes to be a named Plaintiff in this Texas-based lawsuit. Accordingly, pursuant to Fed. R. Civ. P. 21, Mr. D'Cruz respectfully requests that the Court enter an order dismissing him from this lawsuit.

3. Plaintiffs Andrew Payne and the NRA, however, plan to continue with this lawsuit. In addition, two other members of the NRA (on whose behalf the NRA is already suing) wish to become named plaintiffs in this lawsuit: Rebekah Jennings and Brennan Harmon. Ms. Jennings and Ms. Harmon are both nineteen-year-old Texas residents who allege that their Second Amendment rights are being violated by the laws at issue in this case. Ms. Jennings and Ms. Harmon thus respectfully request that, pursuant to Fed. R. Civ. P. 21, the Court join them as party-plaintiffs in this action.

4. To account for these changes, Plaintiffs Payne and NRA (and putative Plaintiffs Jennings and Harmon) respectfully request that, pursuant to Fed. R. Civ. P. 15(a)(2), the Court permit the filing of a Second Amended Complaint in this action. A copy of that Second Amended Complaint is attached to this motion. The legal allegations remain the same; the Second Amended Complaint contains factual allegations about Ms. Jennings and Ms. Harmon and also amends the caption to reflect the change in parties. To that end, Plaintiffs also respectfully request that the Court enter an order officially recaptioning the case as follows:

REBEKAH JENNINGS; BRENNAN)
HARMON; 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.)

5. Counsel for Plaintiffs has conferred with counsel for Defendants regarding this motion, and counsel for the Department of Justice has not yet had an opportunity to confer with his client about the position that the ATF will take on this motion.

CONCLUSION

Wherefore, Plaintiffs respectfully request that the Court enter an order (i) dismissing James D’Cruz as a party-plaintiff; (ii) joining Rebekah Jennings and Brennan Harmon as party-plaintiffs; (ii) granting leave to file a Second Amended Complaint; and (iv) amending the caption of the case to reflect the dismissal and additional of party-plaintiffs.

Dated January 28, 2011

Respectfully submitted,

Fernando M. Bustos
State Bar No. 24001819

s/ Charles J. Cooper
Charles J. Cooper*
David H. Thompson*

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Counsel for Plaintiffs

CERTIFICATE OF CONFERENCE

Counsel for Plaintiffs has conferred with counsel for Defendants, Mr. Daniel Riess, and counsel for the Department of Justice has not yet had an opportunity to confer with his client about the position that the ATF will take on this motion. Plaintiffs therefore cannot represent that Defendants consent to this motion.

s/ Charles J. Cooper _____
Charles J. Cooper

CERTIFICATE OF SERVICE

On January 28, 2011, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or *pro se* parties of record electronically or by another manner authorized by Federal rule of Civil Procedure 5 (b)(2).

s/ Charles J. Cooper _____
Charles J. Cooper