17-11 - Temporary Injunction Granted Regarding Prohibition of the Possession of High-Capacity Magazines Duncan vs Becerra Case Summary

Los Angeles County Sheriff's Department

NEWSLETTER

Field Operations Support Services, (323) 890-5411

TEMPORARY INJUNCTION GRANTED REGARDING

PROHIBITION OF THE POSSESSION

OF HIGH - CAPACITY MAGAZINES

BACKGROUND

On November 8, 2016, as a result of the passing of Proposition 63, California Penal Code section 32310 was amended, adding subsections (c) and (d), ordering the dispossession/surrender of lawfully obtained/purchased high capacity magazines as of July 1, 2017. The amended law states:

§32310.

(c) Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, commencing July 1, 2017, any person in this state who possesses any large-capacity magazine, regardless of the date the magazine was acquired, is guilty of an infraction punishable by a fine not to exceed one hundred dollars ($100) per large-capacity magazine, or is guilty of a misdemeanor punishable by a fine not to exceed one hundred dollars ($100) per large-capacity magazine, by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(d) Any person who may not lawfully possess a large-capacity magazine commencing July 1, 2017 shall, prior to July 1, 2017:

(1) Remove the large-capacity magazine from the state;

(2) Sell the large-capacity magazine to a licensed firearms dealer; or

(3) Surrender the large-capacity magazine to a lawenforcement agency for destruction.

TEMPORARY INJUNCTION GRANTED

On June 29, 2017, the federal District Court for the Southern District of California, in the case entitled ***Duncan et al v. Becerra***, granted a preliminary injunction against the implementation of the amended sections of 32310 PC. The plaintiffs argued that sections (c) and (d) infringed upon a California citizens' federal Constitutional right to keep and bear arms under the Second Amendment to the United States Constitution, and applied the "Takings Clause," referring to the last clause of the Fifth Amendment. The Takings Clause prohibits Government from taking a person's private property without providing just compensation, in this case; legally obtained high capacity magazines already in a person's possession, as subsection (d) orders.

EFFECT ON LAW ENFORCEMENT

Under the temporary injunction, law enforcement officers in the state of California are not to enforce sections (c) and (d) of Penal Code 32310, until further ruling and order by the Court. The effective portion of the temporary injunction states:

"... and those duly sworn state peace officers and federal lawenforcement officers who gain knowledge of this injunction order, are enjoined from implementing or enforcing California Penal Code sections 32310(c) and (d), as enacted by Proposition 63, or from otherwise requiring persons to dispossess themselves of magazines able to hold more than 10 rounds lawfully acquired and possessed…"

If you have any questions regarding the information contained in this newsletter, please contact Field Operations Support Services, at (323) 890-5411 or foss@lasd.org.

CITES / REFERENCES

Duncan et al v. Becerra, 17-CV-10017

Penal Code section 32310

FOSS Newsletter 16-21, "2017 Legislative Update" :

http://intranet/intranet/sites/Rmb/FOSS/newsletters/2016/16-21.pdf