

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
Palm Beach Division**

LARRY KLAYMAN

Plaintiff,

v.

The Honorable BARACK OBAMA  
President of the United States

and

The Honorable THOMAS E. BRANDON  
Deputy Director of the U.S. Department of Justice,  
Head of the Bureau of Alcohol, Tobacco and Firearms

and

The Honorable LORETTA LYNCH  
U.S. Attorney General

and

THE UNITED STATES OF AMERICA

Defendants.

Case No. 9:16-cv-80087-DMM

**PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL FACTS  
IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff hereby submits his Statement of Undisputed Material Facts pursuant to the Pursuant to Federal Rules of Civil Procedure ("FRCP") Rule 56 and the Rules of the U.S. District Court for the Southern District of Florida ("Local Rules") 7.5 and 56.1.

1. On January 4 and 5, 2016, the White House ("Executive Office of the President") announced President Obama's series of orders and actions as an initiative which Obama titled

**“New Executive Actions to Reduce Gun Violence and Make Our Communities Safer”**

(hereinafter “new gun control rules” or Defendants’ “initiative”). See, Exhibit 1, attached, Fact Sheet, Office of the Press Secretary, Briefing Room, The White House, January 4, 2016. This is the the so-called “fact sheet” referred to by Press Secretary Josh Earnest, which is:

2. These new gun control rules include a mixed bag of various actions. The Plaintiff challenging some of the Defendants’ actions. Complaint ¶ 27.

3. On January 4 and 5, 2016, the Defendant Obama and the other Defendants announced in public press conferences and speeches – which they intended to be broadcast and repeated through the news media to the public at large – several changes in existing gun control laws and regulations. See, Exhibit 2, attached Press Briefing, Press Secretary to President Obama Josh Earnest, January 5, 2016, accessible at: <https://www.whitehouse.gov/the-press-office/2016/01/05/press-briefing-presssecretary-josh-earnest-152016>

4. The Defendants openly and voluntarily admit to having changed the law regulating the purchase and sale, transfer, gift, or conveyance, of firearms and the licensing requirements for those designated as “dealers” in firearms.

5. The Defendants’ new gun control rules now subject private citizens – including the Plaintiff – to potential criminal prosecution for felonies punishable by up to five years in jail and fines of up to \$250,000 for each occurrence for conduct that was legal prior to January 4, 2016.

6. The current Press Secretary to the President of the United States is Josh Earnest. See, Exhibit 2, Press Briefing.

7. The Press Secretary to the President of the United States is authorized to speak on behalf of the Defendants when making his official statements to the press.

8. The Defendants publicly stated in press conferences and public speeches, intended to be broadcast to the public and reported on publicly by journalists, that they changed the law because Congress would not agree with Defendant Obama's proposals to pass legislation to achieve their policy goals. See, Exhibit 2, Press Briefing.

9. The Defendants issued a "fact sheet" announcing the changes. See, Exhibit 3.

10. In addition to public statements by the Defendants announcing their change to the law, Press Secretary Josh Earnest made admissions on behalf of the president on January 4 and 5, 2016, on behalf of the Defendants intended to explain and identify the Defendants' new gun control rules. See, Exhibit 2, Press Briefing.

11. The Defendants' new gun control rules were put into effect immediately on January 5, 2016, as stated by John Earnest in public admissions on January 5, 2016, to journalists, intended to be repeated and broadcast to the public generally. See, Exhibit 2, Press Briefing, attached ("MR. EARNEST: Well, certainly the guidance will begin to be implemented today. And that is one of the benefits of the President's proposal, that these are actions that can be -- that aren't subjected to a protracted rule-making process but rather changes that can go into effect and begin being implemented today.")

12. Josh Earnest publicly admitted to journalists on January 5, 2016, in public statements, intended to be repeated and broadcast to the public generally, that the Defendants had not (at least as of that time) released any orders, memoranda, directives, communications, regulations, etc., to the public embodying, containing, or communicating the Defendants' new gun control rules. Josh Earnest stated in response to journalists' questions that he would check to find out if any official documents embodying the Defendants' new gun control rules exist. See Exhibit 2, attached ("MR. EARNEST: I'm not sure what sort of administrative paperwork is

required to implement the policy that the President discussed today, but we can certainly consult with Counsel's Office here and get back to you with an answer on that.”)

13. The Defendants did not change the law by having both houses of Congress vote to enact a new or modification of statute and related regulations which were then presented to the President for signature or veto in accordance with the procedure mandated by the Constitution. See, Exhibit 2, Press Briefing.

14. The Defendants did not change the law by promulgating regulations under the Administrative Procedures Act. See, Exhibit 2, Press Briefing.

15. The Defendants' change of the law affects private persons not employees, personnel, or officials of the Bureau of Alcohol Tobacco and Firearm (“ATF”). See, Exhibit 1, Exhibit 2, Press Briefing; Exhibit 3; Exhibit 4.

16. As a result, the Defendants have in fact in derogation of the U.S. Constitution and the Administrative Procedures Act promulgated new law, rules, and/or regulations creating new forms of criminal liability that subject private citizens to criminal prosecution.

17. The Defendants' change to the law (a) makes a criminal violation of law what was previously lawful, and in other respects (b) expands criminal liability to persons previously exempt from criminal liability. See, Exhibit 1, Exhibit 2, Press Briefing; Exhibit 3; Exhibit 4.

18. To hide and obscure their actions, the Defendants have not issued – publicly – any formal guidance, order, memoranda, or other documentation of the changes, but announced the changes only by press release, through a “fact sheet” distributed as a press release to journalists, in speeches to the public, and in press conferences. See, Exhibit 2, Press Briefing.

19. For example, in contrast to Defendant Obama's June 15, 2012, Deferred Action for Childhood Arrivals amnesty program in which he ordered then Secretary of Homeland

Security Janet Napolitano to issue a formal memorandum ordering the U.S. Department of Homeland Security to effectively grant amnesty to 1 to 1.5 million illegal aliens, here now these Defendants have adapted to evade public scrutiny and interfere with judicial review by publicly announcing the changes but withholding from scrutiny any implementing documents, orders, directives, or memoranda. *Texas v. United States of America*, Appeal No. 15-40238 (5th Cir. November 9, 2015).

20. As stated in Paragraph 8 of the Complaint, Plaintiff Klayman is the owner of guns for his protection, include two 9 millimeter handguns and one .45 caliber which are stored in this district in part as a prized collector's item as well as in self defense, all properly licensed and permitted. He also holds a Florida concealed weapons permit. As a lawyer, Klayman has sued terrorist organizations and countries for supporting terrorism. Especially while litigating against the Clintons, he has been actually threatened with death threats. He therefore needs the protections of the Second Amendment.

21. On January 4, 2016, the Defendants issued an additional fact sheet from ATF, attached as Exhibit 4:

ATF Publication 5310.2 (January 2016), DO I NEED A LICENSE TO BUY AND SELL FIREARMS? Guidance to help you understand when a Federal Firearms License is required under federal law. U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, page 4, accessible at: <https://www.atf.gov/file/100871/download>

22. The method by which Defendant Obama changed the law concerning immigration enforcement is nearly identical – in process and substance (though on a different topic of course) – as the Defendants' new gun control rules at issue here. Indeed, this case here involves the new gun control rules that are consciously intended to be the exact same maneuver by the Defendants as employed to grant safe harbor to illegal aliens, now reproduced, repeated, and employed to

expand gun control regulation. See *Texas v. United States of America*, Appeal No. 15-40238 (5th Cir. November 9, 2015).

23. Now, however, under the Defendants' new gun control rules, the Defendants have ordered ATF officials and personnel, and those of other agencies, to load into the NISC background check database persons who have mental health "issues" ***but who have not been formally adjudicated as mentally incompetent by a court of law.*** See, Exhibit 2, Press Briefing, Exhibit 5, attached.

24. The Defendants have ordered the Social Security Administration to report all persons receiving disability payments to be included in the NISC database. Exhibit 2, Press Briefing.

25. The Defendants ask all medical professionals to report their patients who exhibit any poorly-defined mental health "issues" and are working to change the professional rules within those professions to both endorse and require such reports. See Exhibit 2, Press Briefing.

26. Violations of these laws are punishable by up to five years in jail and fines of up to \$250,000 for each incident whose actions were lawful prior to January 4, 2016. Exhibit 1, Exhibit 3, Exhibit 4.

27. The undeniable core of the Defendants' changes to gun control laws is that prior to January 4, 2016, the key terms of gun control laws were interpreted and applied one way, but on and after January 5, 2016, the Defendants interpret and apply those same gun control laws in a different way. See, Exhibit 2, Press Briefing.

28. Furthermore, the public announcements by the Defendants, including for years before the change, confirm that the change is purely a political disagreement with Congress. See, Exhibit 2, Press Briefing.

29. Just as with safe harbor for illegal aliens, the Defendants here announced the reason for their actions being that Congress would not agree with President Obama. *Id.*

30. It is undeniable that the change was made because the Defendants prefer one policy choice and de facto regulation over another. *Id.*

31. The Defendants' official requests that such vague information be reported to the NISC database from medical professionals logically signals that they will receive such information in the database and use it to deny Second Amendment rights to such patients. It is a reasonable inference that requests for the information to be reported to NISC means that the Defendants intend to include the information in the NISC database and actually use it to block gun purchases. Otherwise, there would be no purpose to asking doctors to report the information.

32. The now popular term "executive action" is poorly-defined, but has come in the last few years to embrace actions taken by the President through the executive branch in the absence of Congressional legislation, but which may be broader than the more formal executive orders well known in our country's law. Typically, executive action means an executive order without the President issuing a formal, written, formatted, and numbered executive order as a document. A verbal instruction or verbal executive order is then implemented by departmental heads issuing their own memoranda or orders – but doing so on the president's explicit orders that they should. Here, as Josh Earnest admits, the Defendants have not released the paper trail of documents for their new gun control rules, to evade scrutiny and to abrogate and evade the law.

Dated: February 3, 2016

Respectfully submitted,

/s/ Larry Klayman

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this February 3, 2016 a true and correct copy of the foregoing Plaintiff's Statement of Facts in support of Plaintiff's Motion to for Summary Judgment was filed with the Court through the Court's Electronic Case Filing system, and will be delivered electronically to all counsel for the Defendants who have entered an appearance in this case through the ECF system, including:

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/s/ Larry Klayman  
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