

13-56454

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EUGENE EVAN BAKER,
Plaintiff and Appellant,
v.
ERIC H. HOLDER, Jr., Attorney General,
in his official capacity as Attorney General
of the United States, et al.,
Defendants and Appellees.

On Appeal from the United States District Court
for the Central District of California

No. 2:10-cv-03996-SVW-AJW
Hon. Stephen V. Wilson, Judge

**APPELLEES KAMALA D. HARRIS AND
CALIFORNIA DEPARTMENT OF JUSTICE'S
OPPOSITION TO APPELLANT'S MOTION
FOR SUMMARY REVERSAL**

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Justice*

Defendants and Appellees Kamala D. Harris, the Attorney General of California, and California Department of Justice (“State Defendants”) join in the argument advanced in the Federal Appellee’s Opposition to Appellant’s Motion For Summary Reversal.

The State Defendants role in this litigation has been limited. Plaintiffs initiated their Second Amendment challenge to section 922(g)(9) by filing the original complaint on May 27, 2010. The Court initially dismissed the complaint with prejudice, but this Court reversed and remanded with leave to amend. On October 11, 2012, more than two years after filing suit, Plaintiffs filed an amended complaint naming the State Defendants for the first time. The district court ultimately rejected Plaintiffs’ constitutional challenge to 18 U.S.C. section 922(g)(9) and dismissed the entire amended complaint with prejudice. Plaintiffs appealed.

According to the amended complaint, Plaintiffs added the State Defendants as parties to this action because the California Department of Justice is the state law enforcement agency that serves as the intermediary, or “Point of Contact,” between a federal firearms licensee (“FFL”) and the federal databases checked by the National Instant Criminal Background Check System (“NICS”), which an FFL must contact for information on whether receipt of a firearm by the person purchasing it would violate federal or state law. (First Am. Compl. ¶¶ 4, 11-12 &

29.) *See* 28 C.F.R. §§ 25.1, 25.2 & 25.6 (describing role of Point of Contact); Cal. Penal Code § 28220(b) (state law authorizing California Department of Justice to be Point of Contact for background checks). The amended complaint prayed that any order declaring section 922(g)(9) unconstitutional and enjoining its enforcement encompass both the Federal and State Defendants. (First Am. Compl. at 13-14.)

The amended complaint did not challenge any state law. Rather, only a federal statute, section 922(g)(9), has been at issue in this case. The United States Department of Justice is charged with defending the constitutionality that law, *see* 28 U.S.C. §§ 501 et seq., and the Office of the United States Attorney has thoroughly and accurately defended the federal statute to date. Thus, the State Defendants simply join in the Federal Appellee's recently-filed opposition brief.

Accordingly, for the reasons set forth in the Federal Appellee's opposition, this Court should deny the motion for summary reversal.

Dated: November 12, 2015

Respectfully Submitted,

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/s/ ANTHONY R. HAKL

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CERTIFICATE OF SERVICE

Case Name: **Baker v. Holder (Appeal)** No. **13-56454**

I hereby certify that on November 12, 2015, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

APPELLEES KAMALA D. HARRIS AND CALIFORNIA DEPARTMENT OF JUSTICE’S OPPOSITION TO APPELLANT’S MOTION FOR SUMMARY REVERSAL

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 12, 2015, at Sacramento, California.

Tracie L. Campbell
Declarant

/s/ Tracie Campbell
Signature

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