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Safeguarding Justice for All Americans

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February 6, 2019

Matthew G. Whitaker
Acting United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Second Amendment Rights of Assistant United States Attorneys

Dear Acting Attorney General Whitaker:

The National Association of Assistant United States Attorneys (NAAUSA) represents the interests of 5,400 Assistant United States Attorneys employed by the Department of Justice, and they are responsible for the prosecution of federal crimes and the handling of civil litigation throughout the United States. United States Attorneys and Assistant United States Attorneys are the gatekeepers of our system of justice. Their primary responsibility is to protect the innocent and convict the guilty. NAAUSA submits the following information and requests concerning the Second Amendment rights of Assistant United States Attorneys.

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court held that the Second Amendment was not just limited to a “well regulated militia,” but applied to all citizens. The Court’s holding was reaffirmed in *McDonald v. City of Chicago, Ill.*, 561 U.S. 742 (2010) (“we hold that the Second Amendment right is fully applicable to the States.”). All 50 states have passed laws permitting individuals to carry certain concealed firearms in public. Many states require no licensing or training to carry a firearm in public, while other states require some training and/or a specialized need to carry a firearm in public. However, even now most Assistant United States Attorneys have specialized training in criminal law and use of force – training that most people in this country do not have – they are deprived of their Second Amendment rights on their way to and from work.

As you know, threats to Assistant United States Attorneys are real. Assistant United States Attorneys have been murdered, assaulted, and threatened. Sometimes the threats are direct; other times the threats are subtle. Such threats exist in both large and small communities. Indeed, in many smaller communities, the threats and

potential dangers are even more acute because it is difficult for the attorneys to remain anonymous.

Additionally, in many “satellite” or smaller United States Attorney’s Offices, there is no direct and/or present security for the attorneys and staff in those offices. There may be incidental protection from Court Security Officers or Deputy United States Marshals, but many smaller offices have no dedicated security staff on duty. As a result, in satellite offices, Assistant United States Attorneys frequently have contact with members of the public who come in to make complaints. Inevitably, some of these people are dangerous – sometimes with antigovernment views and/or mental health issues. It is also common for Assistant United States Attorneys – again, particularly in the satellite offices – to have unsupervised contact (especially after hours) with criminal defendants who may be in the building meeting with the Federal Public Defender, Pretrial Services, or the United States Probation Office. Furthermore, it is not uncommon for criminal defendants to be loitering in unguarded government or private parking lots, sometimes directly next to an Assistant United States Attorney’s vehicle.

Notwithstanding their specialized training and the real risks faced by Assistant United States Attorneys, Department of Justice policy, USAP No. 3-15.170.001, prohibits employees who are not deputized from carrying a firearm into a federal facility. This is unacceptable, as it effectively prevents most Assistant United States Attorneys from carrying a firearm to and from work for purposes of self-defense. Accordingly, we request the following:

- Department of Justice policy should be modified to permit Assistant United States Attorneys, who are qualified to carry firearms under their respective state’s law, to carry certain firearms (i.e., pistols or revolvers) into their United States Attorney’s Office (USAO).¹ Once inside the United States Attorney’s Office, the firearm should be stored in a gun locker until the attorney leaves on break and/or at the conclusion of the business day. The USAO should provide gun locker storage (as they do in many offices for federal agents and officers). However, until such gun storage lockers are installed and available, Assistant United States Attorneys should be permitted to store their firearms in a Transportation Security Administration approved gun container in their own offices.²

¹ Department of Justice policy should be implemented to regulate permissible firearms and holsters. Additionally, policy should be implemented to permit Assistant United States Attorneys to carry firearms during in-district travel in government vehicles.

² A change in policy would lawfully permit United States Attorneys and Assistant United States Attorney to carry firearms into a federal facility under 18 U.S.C. § 930(d)(1).

- Department of Justice policy should also be modified to expand the deputation of Assistant United States Attorneys by the United States Marshal Service. Deputation should be expanded to permit attorneys in satellite offices and smaller communities (e.g., a city size of less than 150,000 people) – especially in offices where there is no dedicated on-site security for the USAO – to seek deputation without the need to show that there has been a threat made or posed to the attorney. *See* USAP No. 3-15.170.001, ¶ 6 (procedures requesting deputation). Additionally, deputation should be permitted for honorably discharged Veterans of the United States military and former sworn law enforcement officers who are not otherwise prohibited from owning and/or possessing a firearm under 18 U.S.C. § 922(g).

In conclusion, NAAUSA urges you to make the changes described above. Doing so is consistent with the Second Amendment, as well as the spirit and mission of the United States Department of Justice. We appreciate your consideration of these matters.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Lawrence Leiser". The signature is fluid and cursive, with a large initial "L" and a long, sweeping underline.

Lawrence Leiser
President

cc: The Honorable Donald Trump
President of the United States

The Honorable John Cornyn
United States Senator