



Monday, August 14, 2017

Senate President Pro Tempore Kevin de León  
Assembly Speaker Anthony Rendon  
State Capitol Building  
Sacramento, CA, 95814

**URGENT: Serious Constitutional Violations Passed in Assembly Bill 103**

Dear President pro Tempore de León and Speaker Rendon:

I write you today on behalf of Firearms Policy Coalition and its many members and supporters to once more express our serious concerns over recent amendments to the Penal Code enacted by Assembly Bill 103 (Ch. 17, Stats. 2017) that impact the fundamental constitutional rights of California citizens.

While our organization made every effort to notify you and other members of the Legislature so that the constitutional infirmities could have been remedied before AB 103 was passed and subsequently signed into law on June 27 (immediately taking effect as an “urgency bill”; *see* Cal. Const. Art. IV, § 8), political priorities prevailed over our repeated warnings about the legislation’s impact upon civil rights. We hope that by raising these issues again, now, you will act swiftly to remedy the constitutional defects AB 103 introduced into the statutory scheme.

California law prohibits persons convicted of a felony from possessing firearms for life, Penal Code § 29800, and it prohibits persons convicted of certain misdemeanors from possessing firearms for a period of ten years. *Id.* § 29805. California law likewise requires that, when convicted, courts must provide a notice informing the defendant of the firearms prohibition along with information to facilitate the transfer of any firearms the defendant owns. *Id.* § 29810.

AB 103 expanded the statutes’ firearms automatic prohibitions to now cover persons who have an “outstanding warrant” for their arrest for a felony or specified misdemeanors, without regard to whether the person even knows they are the subject of a warrant, let alone been found guilty of any crime. Thus, because AB 103 deprives the accused of both liberty (their right to acquire and possess a firearm) and property (any firearm they might already own) without notice and an opportunity to be heard, the bill violates the Due Process Clause of the Fifth Amendment.<sup>1</sup>

The Fifth Amendment’s Due Process Clause guarantees that “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law.” Because “[t]he right to prior notice and a hearing is central to the Constitution’s command of due process,” *United States v. James Daniel Good Real Property*, 510 U.S. 43, 53 (1993), the “general rule” is “that individuals

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<sup>1</sup> *See also* the separate guarantees to due process of law as enshrined in California’s state constitution. Cal. Const. Art. I §§ 7, 15, 24, 29.

must receive notice and an opportunity to be heard before the Government deprives them of property.” *Id.* at 48.

While a firearm is, of course, personal property, the interest at stake here is more substantial than the deprivation of a material possession. “[T]he right to keep and bear arms” is “among those fundamental rights necessary to our system of ordered liberty.” *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010). AB 103 strikes at the core of the Second Amendment: the right to keep and bear arms in the home for self-defense. *District of Columbia v. Heller*, 554 U.S. 570, 630, 635 (2008).

Setting aside the Second Amendment issues, by establishing a scheme that prohibits possession of firearms based solely on the *issuance* of a warrant (without notice of the warrant, or the procedural safeguards associated with a conviction), the statutory scheme violates due process. *See, e.g., United States v. Arzberger*, 592 F. Supp. 2d 590, 601–03 (S.D.N.Y. 2008) (requirement that person charged with crime surrender firearms violates due process).

Under AB 103, a person becomes prohibited from possessing a firearm as soon as the warrant is issued for one of the specified crimes (including misdemeanors) without regard to whether they even know that a warrant was issued (and, obviously, without regard to whether they are ever convicted of the underlying crime). In essence, the law now guarantees that anyone who possesses a firearm and becomes the subject of an arrest warrant for one of the specified crimes will automatically be guilty of the additional, new crime of possession. This is blatantly unconstitutional.

Even if the lack-of-notice defect were cured, by depriving persons of their constitutional rights before there has been any judicial determination on the underlying criminal matter, AB 103’s amendments conflict with “[t]he principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.” *Coffin v. United States*, 156 U.S. 432, 453 (1895).

Because persons with outstanding warrants are “ordinary people who have been accused of a crime but are presumed innocent,” *United States v. Scott*, 450 F.3d 863, 871 (9th Cir. 2006), due process requires an “individualized determination” before depriving them of their constitutional rights. *Id.* at 872, 874 (holding that subjecting pretrial releases to blanket, mandatory drug screening violated the Fourth Amendment). “That an individual is charged with a crime cannot, as a constitutional matter, give rise to any inference that he is more likely than any other citizen to commit a crime if he is released from custody. Defendant is, after all, constitutionally presumed to be innocent pending trial, and innocence can only raise an inference of innocence, not of guilt.” *Id.* at 874.

In the final analysis, AB 103 created serious new constitutional problems that should be corrected immediately. The statutes must be amended to remove serious constitutional conflicts and restore the people’s fundamental right of due process of law. The constitutionally-offending text (“, or has an outstanding warrant for,”) should and must be deleted completely from both §§ 29805 (unless one § 29805 is fully repealed, in which case the remaining § 29805 should be so amended) to restore important constitutional rights and the presumption of innocence.

As always, please feel free to call me at (916) 378-5785 if you have any questions or if we can be of assistance to you and your respective staff members. Thank you very much for your time and attention to this very important matter concerning fundamental, individual constitutional rights.

Sincerely,

A handwritten signature in black ink, appearing to read "C. DeLuz". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Craig DeLuz  
Legislative Liaison

cc: Governor Jerry Brown  
American Civil Liberties Union (ACLU) (national and California chapters)  
California Public Defenders Association  
California Attorneys for Criminal Justice  
Criminal Defense Bar Association of San Diego  
Criminal Trial Lawyers Association of Northern California  
Association of Southern California Defense Counsel  
National Association of Criminal Defense Lawyers