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FILED

09 OCT 23 AM 11:59

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

5 Attorney for Plaintiff
EDWARD PERUTA

BY: *[Signature]* DEPUTY

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

11 EDWARD PERUTA,
12 Plaintiff,
13 vs.

Case No. '09 CV 2371 IEG - BLM

COMPLAINT FOR DAMAGES
42 U.S.C. §§ 1983, 1988

14 COUNTY OF SAN DIEGO, WILLIAM D.
15 GORE, INDIVIDUALLY AND IN HIS
16 CAPACITY AS SHERIFF,
17 Defendants.

19 COME NOW the Plaintiff Edward Peruta, by and through undersigned counsel, and
20 complaint of Defendants as follows:

21 THE PARTIES

- 23 1. Petitioner Edward Peruta (hereinafter referred to as "Plaintiff/Petitioner") is a natural
- 24 person and a citizen of the United States and of the State of California, residing in San
- 25 Diego County, California.
- 26 2. Defendant San Diego County is a municipal entity organized under the Constitution and
- 27 laws of the State of California.
- 28

[Handwritten mark]

1 3. Defendant William Gore is the Sheriff of San Diego County, and as such, he is
2 responsible for formulating, executing and administering the challenged laws, customs
3 and practices against plaintiffs, and is in fact presently enforcing the challenged laws,
4 customs, and practices against plaintiff. Defendant Gore is sued in both his individual
5 and official capacities.
6

7 **JURISDICTION AND VENUE**

8 4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331,
9 1343, 2201, 2202, and 42 U.S.C. § 1983
10

11 5. Venue lies in this court pursuant to 28 U.S.C. § 1391.

12 **STATEMENT OF FACTS**

13 *Background*

14 6. The Second Amendment to the United States Constitution provides: "A well regulated
15 Militia being necessary to the security of a free State, the right of the people to keep and
16 bear Arms shall not be infringed."
17

18 7. The Second Amendment, by way of the Fourteenth Amendment of the United States
19 Constitution, prohibits states from depriving law-abiding individuals of their right to keep
20 and bear arms.
21

22 8. The Second Amendment guarantees the right to carry handguns for self-defense.

23 9. States are allowed to regulate the carrying of handguns, such that states can prohibit the
24 possession of firearms by felons and the mentally ill, or prohibit the carrying of firearms
25 in sensitive places such as schools and government buildings.
26
27
28

- 1 10. States are not allowed to completely ban the carrying of handguns for self-defense, or
2 impose regulations on the right to carry handguns that are inconsistent with the Second
3 Amendment.
4
- 5 11. With few exceptions, California has banned the carrying of concealed weapons,
6 (California Penal Code § 12025), and public carrying of loaded handguns, (California
7 Penal Code § 12031).
8
- 9 12. California does allow for the issuance of a permit to carry a concealed loaded handgun in
10 public, for self defense, and in small population counties, an individual may obtain a
11 license to carry a loaded and exposed handgun. California Penal Code § 12050(a).
12
- 13 13. To obtain a permit to carry a handgun, applicants must pass a criminal background check,
14 as required by California Penal Code §12052, and successfully complete a handgun
15 training course, as required by California Penal Code §12050(a)(1)(E). An applicant
16 must submit an application for a permit to carry a handgun to the county sheriff in which
17 the applicant resides or spends a substantial amount of time in regard to the applicant's
18 principal place of employment or business being located in that county. Before the
19 county sheriff issues a license to carry a concealed weapon, the county sheriff makes a
20 determination as to whether the applicant is of good moral character and has good cause
21 for a license to carry a concealed weapon.
22
- 23 14. Even if an applicant successfully completes a background check and the handgun training
24 course, the permit will only be issued if in the discretion of the county sheriff, it is found
25 that the applicant is of good moral character and has shown that there is a good cause for
26 the permit. California Penal Code §§ 12050(a)(1)(A), (B). Because county sheriffs have
27 discretion in determining whether an applicant is of good moral character, and whether an
28

1 applicant has "good cause" for a permit, there is no continuity in the issuance of handgun
2 carrying permits. In some counties, such as San Diego, applicants are rarely issued a
3 handgun carrying permit, but in other counties, handgun carrying permits are issued to
4 most law-abiding applicants.
5

6 15. Because county sheriffs have discretion in determining whether an applicant is of good
7 moral character, and whether an applicant has good cause for a permit, the issuance of a
8 license to carry a concealed weapon leads to the disparate treatment of applicants in
9 California applying for a license to carry a concealed weapon. As such, applicants are
10 not protected by the Equal Protection clause of the 14th Amendment of the United States
11 Constitution.
12

13 16. Defendants' policy of requiring fulltime residence in San Diego County before issuing a
14 license to carry a concealed weapon, violates the right to travel guaranteed by the 14th
15 Amendment of the United States Constitution.
16

17 *Violations of Plaintiff's Right to Bear Arms*

18 17. Plaintiff Edward Peruta maintains several residences across the United States, including
19 but not limited to a residence in San Diego County. Plaintiff maintains a permanent
20 mailing address in San Diego, California, where he and his wife have a room in which
21 they keep a wardrobe and other personal items.
22

23 18. Plaintiff and his wife have made their motor home their permanent residence, and stay in
24 San Diego for extended period of times. Plaintiff reserved space at Campland on the
25 Bay, in San Diego, California, from November 15, 2008 through April 15, 2009. He had
26 also reserved space at the same place from February, 2007 through April, 2007.
27
28

1 19. Plaintiff is the founder, and sole stockholder of American News and Information
2 Services, Inc., a news and information company that operates throughout the United
3 States, and which gathers and provides raw, breaking news video, photographs, and news
4 tips to various mainstream media outlets.
5

6 20. As part of Plaintiff's media duties, he often enters high crime areas, which puts him at
7 risk of criminal assaults and in need of the ability to defend himself against the real
8 possibility of being the target of violent crimes.
9

10 21. Plaintiff Peruta and his wife travel extensively throughout the United States in their
11 motor home, carrying large sums of cash, valuables and equipment, which makes them a
12 target for violent crimes.

13 22. As part of Plaintiff's travels, he and his wife often find it necessary to stay in extremely
14 remote rural areas of the United States, including California, which makes them
15 vulnerable physical attacks, due to the fact that they are often limited in their ability to
16 receive immediate assistance from law enforcement or other public safety personnel.
17

18 23. Plaintiff is a certified National Rifles Association, (N.R.A.), instructor with the authority
19 to train and certify individuals in the N.R.A. Basic Pistol Safety Course.
20

21 24. Plaintiff has a valid pistol permit issued by the State of Connecticut, and is recognized by
22 the Department of Public Safety to teach the pistol course required to obtain a
23 Connecticut Pistol Permit.

24 25. Plaintiff was assigned as a marine small arms instructor, (rifle and pistol), at the United
25 States Naval Academy, in 1969.
26

27 26. Plaintiff successfully completed the Connecticut Municipal Training Course, in 1970.
28

1 27. Plaintiff is a former law enforcement officer from the state of Connecticut. Plaintiff was
2 a law enforcement officer from 1969 to 1971.

3
4 28. Plaintiff obtained, and provided to the San Diego County Sheriff, the required 8 Hour
5 Firearms Safety and Proficiency Certificate, in accordance with California Penal Code §
6 12050(E)(i).

7
8 29. The Firearms Licensing and Permits Unit of the State of California Department of Justice
9 found Plaintiff eligible to possess firearms.

10 30. The Second Amendment right to bear arms, and the inherent right of self-defense and
11 self-preservation it advances, are not considered by Defendant San Diego County to
12 constitute "good cause" for the issuance of a permit to carry a concealed weapon.

13 31. Defendant Sheriff William Gore is continuing San Diego County's "good cause" policy
14 for denying permits to carry a concealed weapon.

15
16 32. Pursuant to Defendant San Diego County's "good cause" policy, Plaintiff was denied a
17 permit to carry a concealed weapon by Defendant Sheriff William Gore's predecessor,
18 and it is obvious that re-submission of the same application to Defendant Sheriff Gore
19 would be futile.

20
21 33. But for the lack of a permit to carry a concealed weapon, Plaintiff would carry a
22 concealed weapon for self-defense.

23 34. On November 17, 2008, Plaintiff requested a license to carry a concealed weapon from
24 the San Diego County Sheriff's License Division, at which time he was interviewed by a
25 licensing supervisor to determine whether he satisfied the licensing criteria.

26
27 35. On February 3, 2009, Plaintiff submitted an application for a license to carry a concealed
28 weapon.

1 36. Plaintiff was denied a license to carry a concealed weapon, because the San Diego
2 County Sheriff's licensing division made a finding that Plaintiff did not have good cause,
3 and was not a resident of San Diego County. It was deemed that Plaintiff did not have
4 good cause, because Plaintiff could not document any specific threat of harm, and
5 primary reasons for desiring a license to carry a concealed weapon were due to the fact
6 that he often carried large amounts of cash, valuables and equipment in his motor home,
7 and also because his duties as a news investigator placed him in high crime areas.
8

9
10 37. Defendants have deprived Plaintiff of his right to carry a handgun for self-defense
11 purposes, which is guaranteed by the Second Amendment, because there is a general ban
12 on the exposed carrying of loaded handguns, and because of subjective "good cause"
13 policy.
14

15 38. Plaintiff has shown that he has "good cause" for the license to carry a concealed weapon.
16 However, the Defendants' arbitrary and capricious application of California Penal Code §
17 12050's "good cause" requirement has resulted in the denial to Plaintiff of a license to
18 carry a concealed weapon, and violates Plaintiff's right to equal protection of the laws
19 that is guaranteed by the 14th Amendment of the United States Constitution.
20

21 39. Plaintiff has shown he is a resident of San Diego County. However, Defendants'
22 application of California Penal Code § 12050's residency requirement, has developed
23 into an irrational and unjustified policy that requires fulltime residency in San Diego
24 County, and violates Plaintiff's right to travel that is guaranteed by the 14th Amendment
25 of the United States Constitution.
26

27 ///

28 ///

1 **FIRST CLAIM FOR RELIEF**
2 **U.S. CONST., AMEND. II – RIGHT TO BEAR ARMS, 42 U.S.C. § 1983**
3 **AGAINST ALL DEFENDANTS**

4 40. Plaintiff/Petitioner hereby realleges and incorporates by reference the allegations set forth
5 in Paragraphs 1 through 35 above as set forth herein in full.

6
7 41. Plaintiff is a law abiding individual, competent in the safe handling and operation of
8 handguns, and in need of the ability to defend himself and his wife against violent
9 attacks. Plaintiff is also in need of the ability to defend his valuable property, which he
10 travels throughout California with. Accordingly, there exists no reason to deny Plaintiff a
11 permit to carry a concealed weapon under California Penal Code § 12050.

12
13 42. By maintaining and enforcing a set of customs, practices, and policies depriving Plaintiff
14 of a permit to carry a concealed weapon, including but limited to requiring subjective
15 “good cause” beyond the interest in self-defense and conditioning the consideration of an
16 application for a permit to carry a concealed weapon on a durational residency
17 requirement, Defendants are propagating customs, policies, and practices that violate the
18 Second and Fourteenth Amendments to the United States Constitution, damaging
19 Plaintiff’s rights in violation of 42 U.S.C. § 1983. Plaintiffs are therefore entitled to
20 permanent injunctive relief against such customs, policies, and practices.
21

22 **SECOND CLAIM FOR RELIEF**
23 **U.S. CONST., AMEND. XIV-EQUAL PROTECTION, 42 U.S.C. § 1983**
24 **AGAINST ALL DEFENDANTS**

25 43. Paragraphs 1 through 38 are incorporated as though fully stated in herein.
26

27 ///

28 ///

1 44. Plaintiff alleges that Defendants' "good cause" policy is not objective and results in the
2 unequal treatment of similarly situated individuals applying for a license to carry a
3 concealed weapon.
4

5 45. By maintaining and enforcing a set of customs, practices, and policies arbitrarily denying
6 Plaintiff of a permit to carry handguns based on a subjective determination of their "good
7 cause" for the permit and their length of residence in the county, Defendants are
8 propagating customs, policies, and practices that violate Plaintiff's rights to equal
9 protection of the laws under the Fourteenth Amendment to the United States
10 Constitution, damaging Plaintiff in violation of 42 U.S.C. § 1983. Plaintiff is therefore
11 entitled to permanent injunctive relief against such customs, policies, and practices.
12

13 **THIRD CLAIM FOR RELIEF**
14 **U.S. CONST., AMEND. XIV-RIGHT TO TRAVEL, 42 U.S.C. § 1983**
15 **AGAINST ALL DEFENDANTS**

16 46. Paragraphs 1 through 40 are incorporated as though fully stated herein.
17

18 47. The Fourteenth Amendment guarantees individuals the right to interstate and intrastate
19 travel.
20

21 48. By demanding that individuals reside fulltime in San Diego County before allowing them
22 to apply for a permit to carry a concealed weapon, Defendants Gore and San Diego
23 County are propagating customs, policies, and practices that violate Plaintiff's right to
24 travel under the Fourteenth Amendment to the United States Constitution, damaging
25 Plaintiff's in violation of 42 U.S.C. § 1983. Plaintiff is therefore entitled to permanent
26 injunctive relief against such customs, policies and practices.
27
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that judgment be entered in his favor and against Defendants as follows:

1. An order permanently enjoining Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing the "good moral character" and "good cause" requirements of California Penal Code §12050 against applicants applying for carrying concealed weapons permits who seek the permit for self-defense and are otherwise qualified to obtain a handgun carrying permit under that section;
2. An order permanently enjoining Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from requiring any duration of local residence prior to accepting an application under California Penal Code § 12050;
3. Declaratory relief that the "good moral character" and "good cause" provisions of the California Penal Code § 12050 are unconstitutional either on their face and/or as applied to bar applicants who are otherwise legally qualified to possess firearms and who assert self-defense as their "good cause" for seeking a permit to carry a concealed weapon;
4. Costs of Suit, including attorney fees and costs pursuant to 42 U.S.C. § 1988;
5. Any other further relief as the Court deems just and appropriate.

Respectfully Submitted,



PAUL H. NEUHARTH, JR.

Attorney for Plaintiff, PERUTA

Dated: 10-22-09

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
 PERUTA, EDWARD

(b) County of Residence of First Listed Plaintiff SAN DIEGO
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 PAUL H. NEUHARTH, (SBN147073) 1140 UNION ST, STE. 102,
 SAN DIEGO, CA 92101, TEL. (619) 231-0401

DEFENDANTS
 09 OCT 23 AM 11:58
 COUNTY OF SAN DIEGO, WILLIAM D. GORE,
 INDIVIDUALLY AND IN HIS CAPACITY AS SHERIFF
 SOUTHERN DISTRICT OF CALIFORNIA
 County of Residence of First Listed Defendant SAN DIEGO
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, INDICATE LOCATION OF THE LAND INVOLVED.

09 CV 2371 IEG
 BLM

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(r)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 42 U.S.C. 1983, 1988

Brief description of cause:
 VIOLATION OF PLAINTIFF'S RIGHT TO BEAR ARMS, EQUAL PROTECTION AND RIGHT TO

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: 10-22-09

SIGNATURE OF ATTORNEY OF RECORD: *[Signature]*

FOR OFFICE USE ONLY

RECEIPT # 6621 AMOUNT 350.00 APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

MS 10/23/09

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS006621
Cashier ID: msweaney
Transaction Date: 10/23/2009
Payer Name: PAUL H NEUHARTH APC

CIVIL FILING FEE
For: PERUTA V COUNTY OF SD
Case/Party: D-CAS-3-09-CV-002371-001
Amount: \$350.00

CHECK
Check/Money Order Num: 2480
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.