

1 **D. The Trend After *McDonald* Is Toward Adopting Strict Scrutiny Judicial Review**

2 Since *McDonald*, the District Court for the District of Utah in *United States v. Engstrum*, 609 F.
3 Supp. 2d 1227, 1231-32 (D. Utah 2009), adopted strict scrutiny. And on October 12, 2010, a Wisconsin
4 court applied strict scrutiny in striking down a ban on the concealed carry of knives as violative of the
5 Second Amendment. *State of Wisconsin v. Schultz*, No. 10-CM-138, slip op. (Wis. Cir. Oct. 12, 2010).

6 But *McDonald* came down only recently. Most courts have not yet had a chance to evaluate the
7 appropriate level of scrutiny in light of that ruling. *McDonald*'s clear recognition of the right to keep
8 and bear arms as a *fundamental* right is dispositive. Fundamental rights deserve strict scrutiny review.

9 **IV. THE COUNTY CANNOT MEET ITS BURDEN TO SHOW AN INTEREST IT IS
10 ACTUALLY FURTHERING THAT JUSTIFIES ITS SPECIAL NEEDS "GOOD
11 CAUSE" POLICY¹⁹**

12 This Court previously held that the County had failed (at that time) to identify a government
13 interest "or demonstrate the required 'fit' between the law and the interest served." Order Denying
14 Defendant's Motion to Dismiss, *Peruta*, 678 F. Supp. 2d at 1055 (No. 09-2371). The County now
15 raises "public safety" and "preventing crime" as the general interests it seeks to further with its special
16 needs "good cause" policy. (Opp. 26:1-4.) The County admits the "central reason" for requiring
17 evidence of a specific threat to establish "good cause" is to reduce the number of individuals with
18 CCWs, allegedly to further these interests. (Opp. 26:17-23.)

19 The County does not, nor can it, demonstrate that keeping CCWs from people of good moral
20 character is either necessarily related or narrowly tailored to achieve those particular interests. It must
21 be both to pass constitutional muster.

22 **A. The County Provides No Credible Evidence Establishing That Issuing CCWs to
23 Law Abiding Citizens Will Increase Violent Crimes or Otherwise *Adversely* Affect
24 Public Safety**

25 The County offers no data or evidence establishing its policy of limiting CCW issuance reduces
26 or is likely to reduce crime.²⁰ The County cannot connect increased public danger or crime to increased

27 ¹⁹ Because the County asserts the same interests in defending its "good cause" policy from both
28 Plaintiffs' Second Amendment and Equal Protection (classification of people who are unable to obtain a
CCW for lack of documented "need") claims, this Section applies to arguments for both claims.

²⁰ Amicus provides *one* study claiming that between May 2007 and April 2009 CCW holders "killed
7 law enforcement officers and 42 private citizens." (Brady Center Amicus Br. 11:3-5.) There are
various apparent flaws with the study, mostly the credibility of its creator, the Violence Policy Center,

1 numbers of people who carry guns (whether discretely concealed or not) *pursuant to valid licenses*.
 2 Instead of offering evidence making that connection, the County offers a conjectural connection
 3 between its policy and public safety, claiming that public safety is advanced because reducing the
 4 number of CCWs reduces the number of “unknown persons carrying concealed, loaded firearms” (Opp.
 5 11:25-28), and “widespread and unchecked public carry of concealed and loaded firearms” (Opp.19:4-
 6 7). But, this is not the case here. Rather, based on empirical data, the more likely result will be a small
 7 percentage of individuals will choose, or at least to have the ability, to carry, firearms.²¹ And those
 8 individuals will have had been checked and trained by, and will be known to County officials.

9 In fact, the Declaration of Professor Carlisle Moody filed in support of Plaintiffs’ Opposition-
 10 Reply, establishes that more liberal CCW issuance reduces violent crime. (*See generally* Moody Decl.)
 11 And Professor Moody is corroborated by several other professors experienced in the field. *See*
 12 Declaration of Professor Patrick and Declaration of Professor Mauser. Actual evidence from states
 13 where CCW permits are commonly issued suggests this as well.²² In describing the proliferation of
 14 liberal carry laws in other states, at least one court explained, “there have been no shootouts in town
 15 squares, no mass vigilante shootings or other violent outbreaks attributable to allowed concealed carry.”
 16 *State of Wisconsin v. Schultz*, No. 10-CM-138, slip op. at 5 (Wis. Cir. Oct. 12, 2010).²³

17 In the absence of empirical evidence tying the County’s special need requirement to advancing a
 18 _____
 19 which describes itself as “the most aggressive group in the gun control movement.” *See About the*
 20 *Violence Policy Center*, <http://www.vpc.org/aboutvpc.htm> (last visited Oct. 13, 2010). *See also* Ex. “P”
 for a thorough refutation of the substance of that study by Bob Owens.

21 ²¹ *See* Thom Goolsby, *Concealed Weapons Advocates Were Right: Crime Didn't Go Up*, Chapel Hill
 22 Herald, May 6, 1997, at 4 (attached hereto as Ex. “B”); *see also* Tad Dickens & Ray Reed, *Pistol-*
 23 *Packing and Proud of It*, Roanoke Times, May 19, 2002, A1 (attached hereto as Ex. “C”). These news
 articles explain that most people with CCWs are law-abiding citizens.

24 ²² *See* Enrique Rangel, *Majority of Gun Licensees White Males, Law Abiding*, Lubbock Avalanche
 25 J., Aug. 16, 2009, http://lubbockonline.com/stories/081609/loc_482262241/shtml (attached hereto as
 26 Ex. “D”); *see also* Terry Flynn, *Gun-Toting Kentuckians Hold Their Fire*, Cincinnati Enquirer, June 16,
 1997, http://www.enquirer.com/editions/1997/06/16/loc_kccarry.html (attached hereto as Ex. “E”).
 27 These news articles explain that CCW holders are less likely than the average person to commit a crime.

28 ²³ *But see* Eugene Volokh, *The Second Amendment and the Right to Keep and Bear Arms After D.C.*
v. Heller: Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytical Framework
and a Research Agenda, 56 UCLA L. Rev. 1443 (2009) (explaining that there is no evidence CCW
 issuance is linked to increases or decreases in crime).

1 valid interest, the County and Amicus resort to baseless, and in some cases ridiculous hypothetical
2 constructs. The County's suggestion that issuing CCWs only to persons with "actual anticipated needs"
3 is a legitimate means to further public safety (Opp. 27:19-20) is counterintuitive, since criminals
4 typically do not notify their victims in advance. And its claim that requiring evidence of special "need"
5 from CCW applicants "acts as a backup to those who seek a CCW license for criminal purposes but do
6 not yet have a criminal record" (Opp. 27:19-22) is over the top. Is the County actually claiming that the
7 majority of law-abiding people should be denied the exercise of a fundamental right based on the
8 premise that people planning to commit crimes with guns will forego doing so for lack of a CCW?
9 Does the County actually assert that would-be criminals are so concerned about being charged with a
10 *misdemeanor* and fined for carrying a firearm without a CCW that they would agree to have their good
11 character investigated and pay the \$200 or so in fees to get a CCW before committing armed robbery?
12 It takes no special expertise to realize that felons do not forego committing crimes with a gun for lack of
13 a CCW, any more than they would forego driving to a bank to rob it for lack of a driver's license.²⁴

14 As pointed out in Plaintiffs' Motion, even under the relatively relaxed scrutiny that applies to
15 indirect impositions on *less protected* speech, the Supreme Court has emphasized that a municipality
16 cannot "get away with shoddy data or reasoning." *City of L.A. v. Alameda Books, Inc.*, 535 U.S. 425,
17 438 (2002). "[A] municipality's evidence must fairly support the municipality's rationale for its
18 ordinance." *Id.* (See also Pls.' Mem. Supp. Mot. Partial Summ. J. 16:6-14). Here, there is no such
19 evidentiary support.

20 Certainly, public safety *can* be a compelling state interest, but where constitutional rights are
21 concerned, the government must identify a *specific* interest related to public safety. The interest has to
22 be targeted so as to allow a tailored response. What the government may not do is simply rely on a
23 generic public safety rationale to support the regulation of firearms. That approach would simply
24 resurrect Justice Breyer's rejected interest-balancing test, in which some public safety interest would
25 *always* be important or compelling. That firearms are sometimes misused by criminals does not support
26

27 ²⁴ Amicus also mentions the state's "duty" to protect its populace. (Brady Center Amicus Br. 17:2).
28 There is a practical reason for the right to keep and bear arms: state and law enforcement owe *no* such
duty. *DeShaney v. Winnebago County Dept. of Soc. Servs.*, 489 U.S. 189 (1989). One federal court
even boldly proclaimed "there is no constitutional right to be protected by the state against being
murdered by criminals or madmen." *Bowers v. DeVito*, 686 F.2d 616, 618 (7th Cir. 1982).

1 a *de facto* ban (by withholding licenses) on the lawful carrying of firearms for citizens of good moral
 2 character, particularly when there is *no* connection between more CCW holders and increased crime.
 3 The County's rationalizations are precisely the type of shoddy reasoning that the Supreme Court in
 4 *Alameda Books* warned Courts not to fall for.

5 **B. The Cases Relied on by the County Are Unpersuasive**

6 As support for the validity of its purported compelling interest – to protect the public from the
 7 “evil” of *secretly* carried weapons by vetted licensees (Opp. 26:5-11, 24-27) – the County cites to
 8 several cases,²⁵ *all* of which are either irrelevant, or actually support *Plaintiffs'* claim. *Hale*, *Marin*, and
 9 *Smith* all involve criminal convictions for violations of *concealed* carry statutes, which *Plaintiffs*, for
 10 purposes of this lawsuit concede are constitutional. As for *Andrews*, *Dano*, *Nunn*, and *Reid*, the County
 11 omits the crucial details of those cases. For example, as pointed out by *Plaintiffs* in its Motion (Pls.'
 12 Mem. Supp. Mot. Partial Summ. J. 7:14-22), *Heller* said the following about *Andrews* and *Reid*:

13 In *Andrews v. State*, the Tennessee Supreme Court likewise held that a statute that
 14 forbade openly carrying a pistol “publicly or privately, without regard to time or place, or
 15 circumstances,” violated the state constitutional provision (which the court equated with
 16 the *Second Amendment*). That was so even though the statute did not restrict the
 17 carrying of long guns. See also *State v. Reid*, (“A statute which, under the pretence of
 18 regulating, amounts to a destruction of the right, or which requires arms to be so borne as
 19 to render them wholly useless for the purpose of defence, would be clearly
 20 unconstitutional”).

21 (*Heller*, 128 S. Ct. at 2818 (internal citations omitted)).

22 *Dano* stands for a similar proposition as *Andrews* and *Reid*; specifically: “The right to bear arms
 23 in self-defense is not impaired by requiring individuals to carry weapons openly.” *Dano*, 802 P.2d 1021,
 24 1022 (Ariz. 1990).²⁶ Finally, *Nunn* involved prohibitions where the right to arms was still available by
 25 way of “open carry.” See *Nunn*, 1 Ga. at 251 (“so far as the act . . . seeks to suppress the practice of
 26 carrying certain weapons *secretly*, that it is valid, inasmuch as it does not deprive the citizen of his
 27 *natural* right of self-defence, or of his constitutional right to keep and bear arms. But that so much of it,

28 ²⁵ *Dano v. Collins*, 166 Ariz. 322 (Ariz. Ct. App. 1990); *State v. Reid*, 1 Ala. 619 (1840); *Nunn v. State*, 1 Ga. 243 (1846); *Andrews v. State*, 50 Tenn. 165 (1871); *State v. Smith*, 571 A.2d 279 (N.H. 1990); *People v. Hale*, 43 Cal. App. 3d 353 (1974); and *People v. Marin*, 795 N.E.2d 953 (Ill. App. 2003).

²⁶ The County, with no sense of irony, cites an Arizona case, where *unlicensed* open carry was lawful at the time of *Dano*, and is the latest state to adopt *unlicensed concealed* carry.

1 as contains a prohibition against bearing arms *openly*, is in conflict with the Constitution, and *void . .*”)

2 **V. PLAINTIFFS HAVE ESTABLISHED THEIR EQUAL PROTECTION CLAIMS**

3 **A. County’s Special Need Policy Creates a Class of People Ineligible to Obtain a CCW**

4 The County’s “good cause” policy, as the County admits (*see* Defs.’ Statement of Undisputed
5 Facts 5), creates a class of people, i.e., those in the “mainstream having no “documentation of a specific
6 threat,” which includes Plaintiffs, who are unable to lawfully carry firearms for self-defense.²⁷ The
7 question is whether the classification “impinge[s] on personal rights protected by the Constitution.”
8 *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985) (laws creating such classifications
9 violate equal protection and are subject to strict scrutiny);²⁸ *see also, e.g., Kramer v. Union Free Sch.*
10 *Dist.*, 395 U.S. 621, 626-28 (1969). The answer is “yes,” because the Constitution protects a right to
11 carry firearms for self-defense. The County cannot justify its classification under strict scrutiny review.

12 **B. There Are No Material Factual Disputes Regarding HDSA Member’s Unequal
13 Treatment**

14 The County’s response to Plaintiffs’ allegations of favoritism in issuing CCWs is convoluted. It
15 claims the documentation it requires for *renewal* applications “is not held to the same scrutiny” as that
16 for *initial* applications. (Opp. 23:5-12.) It then argues that the Plaintiffs whose *initial* applications were
17 denied are not similarly situated to HDSA members whose *renewal* application files lack supporting
18 documentation, and it is thus not a fair comparison by Plaintiffs. (Opp. 23:12-19.) However, while the
19 County *may* subject the *evidentiary support* for a renewal to lesser scrutiny – and even that may be
20 improper – it definitely *cannot* subject the *underlying “good cause”* to less scrutiny. Yet, that is what it
21 does. For example, one HDSA member provided as his “good cause” that he drives in desolate areas
22 with his wife and wants “self-defense against anyone that might come” upon them. (*See* Ex. “N”). This

23 ²⁷ The County’s reliance on *United States v. Aguilar*, 883 F.2d 662, 706 (9th Cir. 1989), and
24 *Freeman v. City of Santa Ana*, 68 F.3d 1180 (9th Cir. 1995), is misplaced as these cases deal with
25 selective prosecution and enforcement of *valid* laws; Plaintiffs claim the County’s CCW policy is itself
invalid.

26 ²⁸ The County’s reliance on *Thornton v. City of St. Helens*, 425 F.3d 1158, and *Joyce v. Mavromatis*,
27 783 F.2d 56, 57 (6th Cir. 1986), is also misplaced. Those cases concerned Equal Protection challenges
28 based on discrimination against a *protected class*, whereas Plaintiffs here claim the County puts them in
a class of people deprived of a fundamental right (i.e., the right to bear arms). These are two distinct
concepts under Equal Protection jurisprudence.

1 is *almost identical* to Plaintiff Peruta's reason. Another example²⁹ is a letter addressed to Sheriff Gore
 2 from an HDSA member who had been denied a renewal CCW. The letter was dated October 13, 2009.
 3 After the author mentions his 19 year HDSA membership, he states: "I ask you [Sheriff Gore] intercede
 4 in the process and direct the Licensing division to reissue my CCW." On October 22, 2009, that HDSA
 5 member reapplied asserting "self-protection, a desire to be able to protect myself and my family from
 6 criminal activity, in case response to request to law enforcement is delayed" as his "good cause." He
 7 provided *no documentation* of a specific threat, but was issued a CCW nonetheless. (*See Ex. "L"*.)³⁰

8 To counter Plaintiffs' evidence of disparate treatment, the County calls it "misleading" and
 9 provides various exhibits purporting to show supporting documentation was provided for the HDSA
 10 applications Plaintiffs claim did not have any. (Opp. 22:18-21.) Yet, *entirely* missing from the County's
 11 new exhibits is supporting documentation for any of the individuals Plaintiffs indicated as asserting
 12 merely "personal protection" or "protection" as their "good cause statements."³¹ (*See Pls.' Exs. Supp.*
 13 *Mot. Partial Summ. J. "U" at 2; "V" at 2; "W" at 5; and "X" at 2.*) Once again, this shows some renewal
 14 CCWs were subjected to a lesser "good cause" requirement, not just a lesser documentation standard.

15 The County provides a declaration from Ms. Blanca Pelowitz, Manager of the License Division,
 16 stating that HDSA members are not favored in any way by the County in receiving CCWs. (Pelowitz
 17 Decl. 7:8-9.) But, the credibility of Ms. Pelowitz is dubious when notes with her initials are found in
 18 CCW files stating: "Comma[nder] for HDSA (SDSO) considered VIP @ sheriff level – okay to renew
 19 standard personal protection." (*See Ex. "M"*.) This note shows Ms. Pelowitz was being instructed to
 20 give preferential treatment to at least some HDSA members.³²

21 _____
 22 ²⁹ Since Plaintiffs' Motion was filed, the County disclosed more and less redacted documents
 23 including these examples that Plaintiffs deemed relevant without the previous redactions.

24 ³⁰ Also, both these HDSA member's CCW state "retired," but Dr. Buncher was denied, as the County
 25 admits, because he was retired. (Opp. 6:22-23); *see also Pls.' Exs. Supp. Mot. Partial Summ. J. "W" at*
 26 *3 and "MM" at 4.*

27 ³¹ Further, the County's Exhibits purport to show supporting documentation for the "good cause"
 28 statements provided, yet it is not clear how the documents provided do so.

³² Note that right after proclaiming Sheriff Gore does not favor anyone in issuing CCWs, the County,
 without any sense of irony, admits it issued Peter Q. Davis a CCW and that Mr. Davis "did not need to

1 The County also argues that because Mr. Cleary's CCW was renewed after he appealed his
 2 denial he cannot prove he was treated differently than HDSA members. (Opp. p. 6:20-21, 22:17-28,
 3 23:1-3.) But the County fails to explain why Mr. Cleary was required to produce documentation
 4 confirming his continued employment in the psych ward – his refusal to do so being the basis of his
 5 denial – for his *renewal* CCW application, while the County granted several renewal applications for
 6 members of the HDSA CCWs without requiring *any* supporting documentation. Also, the County fails
 7 to mention that Mr. Cleary's successful appeal of his denial occurred *after* he became a plaintiff in this
 8 lawsuit. Plaintiffs are skeptical that this had no bearing on the County overturning his denial.³³

9 The County further provides no refutation to Mr. Cleary's declaration regarding his own account
 10 of being preferentially treated by the County while a member of HDSA, but instead corroborates his
 11 story by saying "During his initial application, Cleary was awarded his license after an appeal *with then*
 12 *Undersheriff Gore*" (Opp. 23:23-24), exactly as Mr. Cleary describes. (Declaration of Mark Cleary 4-5.)

13 In sum, the evidence taken as a whole, including that provided in Plaintiffs' original Motion,
 14 could easily allow a jury to conclude Plaintiffs were similarly situated to HDSA members but treated
 15 differently, which is the standard set forth by the County from *March v. Ruff*, No. 00-03360, 2001 U.S.
 16 Dist. LEXIS 14708 (N.D. Cal. 2001).³⁴ Plaintiffs here, unlike those in *March*, provide direct references
 17 to HDSA, such as interviewers' notes, not mere tangential facts from which inferences could be drawn.

18 But, as stated in Plaintiffs' Motion, regardless of whether membership in the HDSA is the basis
 19 for the disparate treatment, that the County treats one person differently in issuing CCWs from others is
 20 a violation of equal protection. *See Village of Willowbrook v. Olech*, 528 U.S. 562 (2000).

21 _____
 22 document [his] status" because he is "a prominent San Diegan who recently ran for mayor." (Opp.
 23 22:21-23.)

24 ³³ Despite its claim that "the hearing officer was able to verify his employment" (Defs.' Opp. 6:20-
 25 21), Mr. Cleary provided *no further documentation* at his appeal hearing (*See Cleary Decl. Supp. Pls.'*
 26 *Mot. Partial Summ. J.* (hereafter "Cleary Decl.")).

27 ³⁴ The second part of the test outlined in *March* – that the denials of CCWs be based on
 28 impermissible grounds – is met when denied applicants, as is the case here, demonstrate "good moral
 character" and proficiency with a firearm, and assert self-defense as their "good cause." In fact, the
 value the *March* decision is dubious post-*McDonald*, since Sheriffs no longer have such wide discretion
 to determine "good cause."

1 **VI. TRIABLE ISSUES OF MATERIAL FACT EXIST ON THE COUNTY'S OTHER**
 2 **CLAIMS, WHICH SHOULD BE DENIED**³⁵

3 **A. The Facts Suggest Plaintiff Peruta Was Denied a CCW for Lack of Residency**

4 In its Motion, the County's position is Plaintiff Peruta was not denied a CCW for lack of
 5 residency. (Opp. 6:9-10, 22:1-2, 29:9-10, 29:20-25). It also describes its stated policy for determining
 6 residency. (Opp. 20:21-22:1-4). Both appear to be recently adopted positions by the County. First,
 7 despite his repeated requests, the County never provided Mr. Peruta its stated policy for determining
 8 residency. (*See* Exs. "A" through "J" - Correspondence between Peruta and SDSO regarding its
 9 residency requirement). Second, in trying to dismiss Plaintiff Peruta's original complaint, the County
 10 argued: "*Most significantly*, since the statute requires Plaintiff to meet all *three* requirements of
 11 [California Penal Code §] 12050 to be eligible for a permit, *the failure to meet the residency provision*
 12 *alone ends his constitutional claim.*" (Def.'s Reply 3:19-21) (emphasis added). In short, there is ample
 13 evidence the County denied Mr. Peruta a CCW for lack of residency. Because a factual dispute exists,
 14 Defendants' motion must fail.³⁶ Each of these documents provide a triable issue of fact as to whether
 15 Mr. Peruta was denied a CCW for lack of residency. (*See generally* Declaration of Edward Peruta)

16 All the authority the County cites concerns the legality of denying CCWs to *nonresidents*. (Opp.
 17 30:6-32:1-16). Plaintiff Peruta contends he *is a resident*, and thus is treated differently than similarly
 18 situated persons (i.e., other residents) by being denied a CCW based on his "part-time" residency.

19 **B. Facts Support Peruta's Right to Travel Was Violated**

20 This Court has already made clear "that a State may not impose a penalty upon those who

21 ³⁵ Please note the County brings this motion as to Plaintiffs' claims concerning the County's
 22 residency policy and due process violations, despite Plaintiffs voluntarily foregoing discovery on those
 23 issues, as a professional courtesy, so as to allow the County to focus on the Second Amendment and
 24 other Equal Protection claims. Plaintiffs' reason for doing so was in response to the County claiming it
 25 considered Plaintiff Peruta a resident, and discussions about avoiding litigation on this issue, as well as
 26 the issue of due process violations, by agreeing on mutually agreeable policies the County could adopt.

27 ³⁶ *See* Ltr. from Blanca Pelowitz, Manager of License Div., San Diego Sheriff's Dept., (March 17,
 28 2009) ("[T]he result of the investigation reflects doubt and uncertainty as to his 'permanent residency'
 in San Diego County") (attached hereto as Ex. "K"); *see also* correspondence from Millie Faiai: "it
 appears Peruta's primary residence and business is in Rock Hill, Connecticut." And Mr. Peruta was
 repeatedly told in his initial interview he is not a resident of San Diego County. *See also* Ex. "O" an
 Interview Questionnaire indicating that Plaintiff Peruta was a resident of Los Angeles.

1 exercise a right guaranteed by the Constitution,' ” and that denying *part-time* residents a CCW for lack
 2 of residency deters people “from exercising their right to travel in that they are being ‘penalized’ for
 3 traveling and spending time outside of San Diego.” Order Denying Defendant’s Motion to Dismiss,
 4 *Peruta*, 678 F. Supp. 2d at 1060 (No. 09-2371) (citing *Harman v. Forssenius*, 380 U.S. 528, 540
 5 (1965)). Plaintiff Peruta provides a litany of facts showing he was denied a CCW by the County
 6 because he is only a part-time resident of San Diego. (*See Peruta Decl.*)³⁷ Thus, County’s request for
 7 summary judgment on this claim should be denied.³⁸

8 C. The Facts Support Plaintiffs’ Due Process Claims

9 A violation of Due Process exists where there is a direct and substantial interference with a
 10 fundamental right. *See Zablocki v. Redhail*, 434 U.S. 374, 387 n.12 (1978). Plaintiffs allege the County
 11 informs people seeking a CCW for self-defense who do not have a special “need” that they will be
 12 denied if they submit a formal application (*see Laxson Decl. Supp. Pls.’ Mot. Partial Summ. J.*), and, in
 13 violation of California Penal Code § 12054, that application fees will be collected beforehand and are
 14 not refundable. (*See Ex. “K”* (“Despite the fact that PERUTA was told he did not meet the criteria for a
 15 CCW license PERUTA insisted this office accept his application. PERUTA was advised that no monies
 16 would be refunded once his application was accepted.”). By dissuading applicants who are *entitled* to
 17 carry firearms under the Second Amendment, the County substantially interferes with their, and
 18 Plaintiffs’, access to the fundamental right of self-defense.

19 The County further burdens the fundamental right to self-defense by denying applicants,
 20 including Plaintiffs, a CCW for lack of “good cause” under the County’s policy, because such right is
 21 both a property and liberty interest for purposes of 42 U.S.C. § 1983. *See Kellogg v. Gary*, 562 N.E.2d
 22 685, 696 (Ind. 1990).³⁹ When state action burdens a fundamental right, it is subject to strict scrutiny.

24 ³⁷ Plaintiffs note that since the County considers Mr. Peruta a resident, he likely has no standing to
 25 bring a Privileges & Immunities claim, and he does not oppose that portion of the County’s Motion.

26 ³⁸ Whenever a state law burdens the right to travel, the court must apply strict scrutiny. *Attorney*
 27 *Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898, 904-05 & n.4 (1986) (plurality).

28 ³⁹ The case the County cites to support its position that there is no liberty interest in a CCW, *Erdelyi*
v. O’Brien, 680 F.2d 61 (9th Cir. 1982), did not consider the Second Amendment, and it was decided
 long before *McDonald* clarified that the Second Amendment protects a fundamental, individual right to
 keep and bear arms.