

C.A. No. 10-56971

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

EDWARD PERUTA, et al.,

Plaintiffs/Appellants,

v.

COUNTY OF SAN DIEGO, et al.,

Defendants/Appellees.

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

Honorable Irma E. Gonzalez, District Judge
(DC No. CV-09-2371-IEG(BGS), Southern California, San Diego)

**APPELLEE'S OPPOSITION TO MOTION
FOR RELIEF FROM STAY**

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I

THE *NORDYKE* DECISION MAY VERY WELL
ADDRESS ISSUES RELEVANT TO THIS CASE

This case involves significant Second Amendment issues which have been addressed by this Court in its prior opinions in *Nordyke v. King*. It appears to be likely that the *en banc* panel in *Nordyke* will decide issues that will be highly relevant to the *Peruta* case. The scope of the Second Amendment after *District of Columbia v. Heller*, 554 U.S. 570 (2008), and the standard of scrutiny to be applied in Second Amendment cases are issues that are likely to be decided or addressed by this Court in *Nordyke*, and are fundamental issues in this appeal.

On January 24, 2012, this Court denied Appellants' previous motion seeking to lift the stay order in this case stating: "The *en banc* decision in *Nordyke v. King*, No. 07-15763 may contain legal analysis that would assist in the resolution of this appeal."

Appellants' present motion is based entirely on their interpretation of comments from the *en banc* panel and counsel at oral argument in *Nordyke*. Appellants suggest that the controversy in *Nordyke* is moot, yet the parties apparently don't agree with that assessment and mediation was unsuccessful. The premise of the mootness argument is the claim of *Nordyke* counsel at oral argument that the County had never previously asserted that an exception was available to the gun show. In fact, on summary judgment, the trial judge made a

finding that the exception is broad enough to encompass the show, a finding that was read into the record at the *en banc* argument.

In any event, the case remains before the *en banc* panel which will render an opinion of some nature. Even a remand order may offer guidance. All interests in judicial economy certainly discourage leaping to conclusions about what a court might do in a case of this nature, when any action may well affect the argument and deliberation in this appeal.

It is therefore requested that this appeal remain stayed until *Nordyke* is decided.

DATED: May 22, 2012

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Edward Peruta, et al. v. County of San Diego, et al.
U.S. Court of Appeals Docket Number(s): 10-56971

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the following document(s):
Appellee's Opposition To Motion For Relief From Stay with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on May 22, 2012.

I certify that the following participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system:

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I certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

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