

Case No. 12-17808

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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GEORGE K. YOUNG, JR.,  
Plaintiff-Appellant,

v.

STATE OF HAWAI'I, ET AL.,  
Defendants-Appellees

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On Appeal from the United States District Court  
for the District of Hawai'i, Case No. 1:12-cv-00336-HG-BMK  
Honorable District Judge Helen Gillmor

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**DECLARATION OF CHIEF MICHAEL M. CONTRADES IN  
SUPPORT OF BRIEF OF *AMICI CURIAE* CITY AND  
COUNTY OF HONOLULU, COUNTY OF KAUA'I, AND  
COUNTY OF MAUI, SUPPORTING PETITION FOR  
REHEARING *EN BANC***

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I, MICHAEL M. CONTRADES, declare under penalty of perjury that:

1. I am the Acting Chief of Police for the Kaua'i Police Department ("Department"), a position I have held since July 27, 2018. I have personal knowledge of, and am competent to testify to, the matters set forth below.

2. I have been a member of the Department for over 24 years, having joined in July of 1994. During my tenure, I served as a patrol officer in the Līhu'e, Kawaihau, and Koloa Districts; served one year as a narcotics investigator in the Vice Section before being promoted to Sergeant; served nearly six years as a Sergeant in patrol, as a property crimes Detective and Asset Forfeiture Sergeant in the Vice Section; served three years as a Lieutenant and Commander of the Hanalei District; served one year as a Captain of the Patrol Services Bureau; and served six years as Deputy Chief of Police. During this period I was named and received, Officer of the Year in 1999; Outstanding Instructor in 2000; Humanitarian of the Year in 2009; Peace Maker Award in 2011, and Excellence in Leadership Award from the FBI in 2012. I have been awarded the Department's Drug Enforcement Star, the Department's highest award for service in the fight against drugs. I am a graduate of the 77<sup>th</sup> Session of the Federal Bureau of Investigation's ("FBI") Law Enforcement Executive Development Seminar; a graduate of Bethel University in Tennessee, graduating Suma Cum Laude in 2014 with a Bachelor of Science in Criminal Justice; and a graduate of the 248<sup>th</sup> Session of the FBI National Academy in 2012. I am also a member of the Police Executive Research Forum; FBI National Academy Associates; Police Chiefs of Hawai'i Association; and International Association of Chiefs of Police. During my career I served in many auxiliary roles to include Defensive Tactics Instructor for over 10 years, holding several certifications that involved teaching the defense and retaining of firearms in combative situations. I was also a member of the Special

Response Team, more commonly known as “SWAT,” where I received training in the use of specialized tactics that included the use of various types of firearms.

3. Counsel informs me that two members of a three-judge panel of the Ninth Circuit held that the limitation of the open carry of firearms to those engaged in the protection of life and property in section 134-9 of the Hawai‘i Revised Statutes (“HRS”) violates the Second Amendment and is void. If this decision is allowed to stand, many individuals without a good and substantial reason to carry a firearm will be allowed to do so in public. On the other hand, if the panel’s decision is overturned, law-abiding citizens who can demonstrate a particular need to carry a firearm in order to protect life and property will be able to do so. Contrary to the panel majority’s assumption, such licenses are not limited to security guards or others employed in jobs that entail protecting life and property. I have reviewed Opinion Letter No. 18-1 of the Department of the Attorney General of the State of Hawai‘i, and I agree with its interpretation of section 134-9, which comports with the Department’s past and current practice.

4. The Department requires every applicant for an unconcealed-carry license to meet three objective qualifications. Every applicant must (1) be “a citizen of the United States,” (2) be “of the age of twenty-one years or more,” and (3) not be “prohibited under section 134-7 from the ownership or possession of a firearm.” HRS § 134-9 (a). Section 134-7, HRS, further provides that an individual may not own, possess, or control a firearm if he or she is barred from possessing a firearm by federal law, is a fugitive from justice, or fails to satisfy the statute’s other prerequisites. HRS § 134-7; *see* 18 U.S.C. § 922(g) (1)-(9), (n) (listing federal requirements).

5. An application for an unconcealed-carry license must therefore be denied if the applicant fails to satisfy any of these objective criteria. And the statute specifies, in part, the procedures the Kaua'i police chief or his designated representative must follow prior to making that determination. In accordance with the statute, the Department performs "an inquiry on [the] applicant by using the National Instant Criminal Background Check System, to include a check of the Immigration and Customs Enforcement databases where the applicant is not a citizen of the United States, before any determination to grant a license is made."

6. In accordance with section 134-9, HRS, the Department requires that each applicant must "sufficiently indicate[]" that he or she has an "urgency" or "need" to carry a firearm and is "engaged in the protection of life and property." Typically, an applicant must demonstrate that he or she has an immediate, pressing, and heightened interest in carrying a firearm. Furthermore, the applicant must be "engaged in the protection of life and property," language that requires that the individual be actively "tak[ing] part in" such protection, not merely exhibit a generalized concern for safety.

7. In accordance with section 134-9, the Department also requires applicants to be "of good moral character." The Department will not issue a permit to carry, whether open or concealed, if the applicant has engaged in recent acts of domestic violence; careless handling and storage of a firearm, alcohol or drug abuse, or other recent violent conduct.

8. If an applicant meets the express statutory requirements set forth in section 134-9, the Department will issue a carry permit, regardless of the applicant's occupation, provided that no case-specific reason warrants the exercise of discretion to deny a permit.

9. For example, the Department issued concealed-carry permits in 2006 and 2013 to two citizens who were not security guards and whose jobs did not entail protecting life or property. These individuals demonstrated, through their applications, that they had an immediate, pressing and heightened interest in carrying a firearm, and were accordingly issued concealed-carry permits. Likewise, if an applicant were to apply and meet the statutory requirements for an open-carry permit, as discussed above, such a permit would be issued, regardless of the applicant's occupation, provided that no case-specific reason warrants the exercise of discretion to deny a permit.

10. It has been the Department's experience that law-abiding citizens with a legitimate need to carry a handgun have been able to obtain a permit under the current system, which strikes a proper balance between ensuring access to handgun permits for those who need them while preventing a greater-than-necessary proliferation of handguns in public places—which, as described below, increases risks to public safety.

11. According to the Centers for Disease Control and Prevention ("CDC"), in 2016, Hawai'i ranked 4<sup>th</sup> lowest in the United States for firearm related deaths with a firearm death rate of 4.5 deaths per 100,000 total population with a total of 66 firearm related deaths during that year. New York (4.4, 900), Rhode Island (4.1, 49) and Massachusetts (3.4, 242) were 3<sup>rd</sup>, 2<sup>nd</sup>, and 1<sup>st</sup> lowest firearm death rates respectively. Conversely, according to the CDC, Mississippi (19.9, 587), Louisiana (21.3, 987), Alabama (21.5, 1,046), and Alaska (23.3, 177) have the highest firearm related deaths per 100,000 total population.

12. If Hawai'i could no longer limit open and concealed-carry permits to individuals with a good and substantial reason to have them, based on my

experience, gun violence in the County of Kaua‘i would increase and my officers’ jobs would become harder and more dangerous.

13. Increasing the number of handguns carried publicly in the County of Kaua‘i would increase the availability of guns to criminals. We also know from experience that these criminals often target people they know have handguns *precisely because* they possess handguns, which criminals cannot lawfully obtain. Kaua‘i Police Department has frequently investigated homicides and robberies where it appears that one, if not the primary, goal of the attacker was to deprive the victim of his handgun or other weapons. Obtaining handguns and ammunition is also one of the main reasons why police officers’ homes and vehicles have sometimes been targeted for robberies and break-ins.

14. Although many people believe that they will be able to maintain possession of their handgun in a confrontation with a criminal attacker; that is often not the case, especially in instances of surprise attacks. The Department trains all of its officers in maintaining possession and control of their firearms during a confrontation. The Department also issues specially designed holsters with latches that prevent an attacker from removing the firearm from its holster. The training and special equipment is essential to the safe handling of guns. Civilian training cannot adequately prepare most people to use and protect handguns in tense situations such as being under attack by criminals. In surprise attacks, it is highly unlikely that less-well-trained individuals would be able to successfully use a handgun to defend themselves.

15. In addition to the probability of more guns falling into the hands of criminals, placing more handguns on the streets in the hands of people without good and substantial reason to carry them would increase significantly the

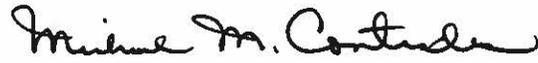
likelihood that basic confrontations between individuals would turn deadly. Most assaults in the County of Kaua‘i arise out of petty disputes between otherwise law-abiding citizens. In the midst of these petty disputes, tempers flare and violence can erupt even in the absence of lethal weapons. The presence of a handgun in an altercation, however petty, greatly increases the likelihood that it will escalate into potentially lethal violence.

16. Increasing the number of handguns on the streets in the hands of people without good and substantial reason to carry them would also increase the possibility that handguns in the hands of law-abiding citizens will hamper police efforts in confrontations with criminals with potentially tragic consequences. In a confrontation between a police officer and a criminal, an additional person bearing a gun might cause confusion as to which side of the confrontation the person is on, which could lead to hesitation by the police officer and the potential for innocent victims, including the permit holder, innocent bystanders, and police officers. This type of problem already occurs with existing permit holders, and would become far more common if permits were not limited to people with good and substantial reason to carry a handgun in public.

17. Having more legal carriers of handguns in the streets, without good and substantial reason to carry a handgun, would also force police officers who spot someone carrying a handgun to choose between creating a potential disturbance by unholstering their own weapon or potentially putting their safety at risk by approaching the carrier without drawing their weapon. Police officers would also have a harder time identifying potential security risks if more people without good and substantial reason to carry a handgun were able to do so, making it more difficult to respond when necessary.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 24, 2018, in Līhu‘e, Kaua‘i, Hawai‘i.

A handwritten signature in black ink, appearing to read "Michael M. Contrades". The signature is written in a cursive style with a horizontal line underneath it.

MICHAEL M. CONTRADES