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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 EDWARD PERUTA, MICHELLE  
LAXSON, JAMES DODD, DR. LESLIE  
12 BUNCHER, MARK CLEARY and  
CALIFORNIA RIFLE AND PISTOL  
13 ASSOCIATION FOUNDATION,

14 Plaintiffs,

15 v.

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

18 Defendants.  
19

USSD No. 09-CV-2371 IEG (BLM)

**DECLARATION OF FRANKLIN E.  
ZIMRING IN SUPPORT OF  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

Hearing Date: November 1, 2010  
Time: 10:30 a.m.  
Courtroom: 1  
Honorable Irma E. Gonzalez

20 I, Franklin E. Zimring, declare as follows:

21 1. My current academic appointment is William G. Simon Professor of Law,  
22 Wolfen Distinguished Scholar and Chair of the Criminal Justice Research Program at  
23 the University of California, Berkeley. I have been studying the relationship between  
24 firearms and violence, strategies of firearms control, and patterns of gun commerce and  
25 civilian gun usage since 1967. I have served as director of research of the task force on  
26 firearms of the National Commission on the Causes and Prevention of Violence in  
27 1968-1969 and as a firearms and federal criminal law expert for the National  
28 Commission on Reform of Federal Criminal Laws. I have published several empirical

1 studies of firearms and violence and on gun control, and I have co-authored three books  
2 with firearms issues at their center, in 1969, 1986 and 1997. I have served as an expert  
3 on the relationship between firearms and violence and on the design and evaluation of  
4 firearms control. I was elected a Fellow of the American Academy of Criminology in  
5 1993 and to the American Academy of Arts and Sciences in 1990. A full curriculum  
6 vitae is Appendix A of this declaration.

7 2. This declaration will summarize the empirical evidence and my expert  
8 opinions concerning four issues arising out of this litigation.

9 (1) The relationship between firearms and violence and the governmental  
10 interest in reducing the rate of gun use in crime.

11 (2) The particular governmental concerns with handguns and other  
12 concealable weapons because of their disproportionate involvement in life-  
13 threatening crimes of violence, particularly in streets and other public places.

14 (3) The special threat posed by concealed handguns as weapons used by  
15 criminals in streets and other public spaces. Persons using the streets cannot  
16 avoid and police patrolling the streets cannot detect persons who carry concealed  
17 handguns and later will find victims who are at risk when concealed guns are  
18 displayed in robberies or assaults and not infrequently discharged. The  
19 governmental interest in limiting the number of persons licensed to carry  
20 weapons hidden on their persons in public places is substantially related to  
21 reducing the volume and deadliness of street robberies and assaults.

22 (4) A robust right to own a handgun in the privacy of one's own home  
23 imposes whatever risks the gun poses on the owner and his family and those who  
24 choose to visit those premises as long as the gun stays home. But unlimited  
25 freedom given to a person to carry a hidden handgun on the streets subjects  
26 everybody else on the street to whatever risks that gun may pose, and the others  
27 on the public fare have neither notice of the risk nor power to control it. This  
28 "externality" of unrestricted street carrying of concealed weapons is probably the



1 root cause of the longstanding and broadly based history of restricting use of  
2 concealed weapons in public places.

3 3. Firearms and the Death Rate from Violence.

4 The overlap between firearms and crime in the United States is a partial but  
5 important one. Of all so-called "index" crimes reported to the police nationwide, guns  
6 are known to be involved in only about 4%. But gun use is concentrated in violent  
7 crime, where about 20% of all offenses involve guns. And when only criminal acts that  
8 kill are counted, guns account for almost 70% of all cases. Why are gun cases seven  
9 out of every ten lethal crimes, if firearms are used in only one out of five violent  
10 criminal acts? Commonsense suggests that the greater dangerousness of guns when  
11 compared to other frequently used instruments of attack such as knives and blunt  
12 instruments, plays a major role in increasing the death rate from crimes, but there is an  
13 alternative hypothesis, that robbers and assaulters who truly want to kill will choose  
14 guns more often, and therefore that the greater death rate simply reflects the more lethal  
15 intentions of those who use guns. Which theory is better supported by studying patterns  
16 of violent assault?

17 A series of studies that were conducted under my supervision addressed this issue  
18 from 1967 to 1988. The first study compared knife and gun attacks in Chicago over  
19 four police periods in 1967. I found that when one only compared gun and knife  
20 assaults to the same part of the body and controlled for the number of wounds inflicted,  
21 the gun attacks were five times as likely to kill.<sup>1</sup> Yet knives were the second most  
22 deadly instruments used in violent assault. A second study found that guns that fired  
23 smaller bullets were much less likely to kill than guns firing larger bullets, again  
24 controlling for both the number of and the location of the most life-threatening wound.  
25 The central finding was that instrumentality effects – the influences of weapon  
26 ///

27  
28 <sup>1</sup> Zimring, Franklin E. "Is Gun Control Likely to Reduce Violent Killings?"  
*University of Chicago Law Review* 35:721 (1968).

1 dangerousness independent of measurable variations in the attacker's intent was an  
2 important influence in the death rate from assault.<sup>2</sup>

3 A second set of studies generated the same general results for the weapons used  
4 in robberies. Since the robber usually doesn't mean to inflict harm if his demands are  
5 met, the death rate from all forms of robbery is much lower than from aggravated  
6 assault, but robberies with firearms are much more likely to produce a victim's death  
7 than robberies using knives or personal force.<sup>3</sup> The availability of guns may or may not  
8 influence the rate of robberies, but the proportion of robberies that involve guns will  
9 have a major impact on the number of victims who die in robberies, and lethal robberies  
10 are a major element in the life-threatening violence that sets U.S. cities apart from the  
11 major metropolitan areas of other developed nations.

12 The governmental interest in restricting the use of guns in violent crime is in  
13 reducing the number of deaths and life-threatening injuries that are produced when guns  
14 rather than less deadly weapons became instruments of robbery and assault. This  
15 interest is clear, appropriate and important for both the State of California and the  
16 County of San Diego.

17 4. The Special Risks of Handguns.

18 All forms of firearms are very dangerous to life if they are used in assaults and  
19 robberies, but the handgun is the major hazard, particularly in big cities, because  
20 handguns are much more likely to be used in criminal violence than shotguns and rifles.  
21 Handguns are slightly more than one-third of all firearms owned by civilians in the  
22 United States, but they are used in more than 75% of all gun killings and in even larger

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26 <sup>2</sup> Zimring, Franklin E. "The Medium is the Message: Firearms Caliber as a  
27 Determinant of the Death Rate from Assault," *Journal of Legal Studies* 1:97 (1972). See  
Philip J. Cook, "The Technology of Personal Violence," *Crime and Justice* 14:1 (1991).

28 <sup>3</sup> Zimring, Franklin E. and James Zuehl. "Victim Injury and Death in Urban  
Robbery: A Chicago Study," *Journal of Legal Studies* 15:1 (1986).



1 portions of robberies. The handgun is small, easy to carry and conceal, and deadly at  
2 short range. Handguns are the priority concern of law enforcement everywhere.<sup>4</sup>

3 The special dangers of handgun use in violence have produced a wide variety of  
4 different legal strategies to minimize the rate of handgun misuse. Many nations attempt  
5 to restrict both the number of such firearms owned by citizens and reasons why citizens  
6 might be permitted to own them. But California, like most U.S. states, allows  
7 competent adults to own handguns if they have no major record of criminal conviction.

8 Because California does not restrict eligibility of most citizens to own handguns  
9 or the volume of guns owned, the state's first line of defense against the use of such  
10 weapons in street crime is a series of restrictions on the time, place and manner of  
11 handgun use. California law prohibits the carrying of concealed deadly weapons  
12 without a special permit. The state law delegates the authority to establish standards  
13 and make individual decisions to county law enforcement. The goal here is to  
14 distinguish uses of handguns that do not pose a special threat to the public (such as  
15 storage and use in the owner's home) from uses that pose greater threats to public safety  
16 (such as the carrying of concealed weapons in streets and public places). The special  
17 danger of a hidden handgun is that it can be used against persons in public robbery and  
18 assault. The concealment of a handgun means that other citizens and police don't know  
19 it is in their shared space until it is brandished.

20 Of course not all of those carrying concealed handguns intend to use them as  
21 instruments of public harm. But the existence of a loaded weapon is a hidden danger.  
22 California's emphasis on controlling this risky use of guns rather than restricting  
23 ownership itself is exactly opposite to the policy formerly pursued by Washington, D.C.  
24 and disapproved in the *Heller* decision in 2008. The distinction between restricting  
25 ownership and restricting dangerous uses is fundamental in the design of firearms

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28 <sup>4</sup> Zimring, Franklin E. and Gordon Hawkins. *Crime Is Not the Problem: Lethal  
Violence in America*, New York: Oxford University Press (1997), Chapters 1, 3 and 7.  
See also Zimring, Franklin E. and Gordon Hawkins, *The Citizen's Guide to Gun Control*,  
New York: McMillan (1986), at Chapter 5, p. 38.

1 control. And no public law regulation of firearms is as old or as pervasive as  
2 restrictions on public space use of firearms.

3 "The earliest and most numerous state and local laws relate to the carrying  
4 or use of firearms. In the 1600s, Massachusetts prohibited the carrying of  
5 defensive firearms in public places. Kentucky in 1813, Indiana in 1819,  
6 Arkansas and Georgia in 1837 passed laws prohibiting the carrying of  
7 concealed weapons. Many states and most cities today have laws  
8 attempting to regulate what has been called the place and manner in which  
9 firearms may be carried or used."<sup>5</sup>

10 Almost all places make special rules for concealed handguns in public places.

11 "Most often, state law prohibits the carrying of concealable firearms  
12 without a special permit and the discharge of guns within city  
13 limits...Forty-nine states now impose some sort of restrictions on carrying  
14 a concealed gun."<sup>6</sup>

### 15 5. The Public Danger of Concealed Firearms.

16 The previous section of this declaration documented the statistical dominance of  
17 handguns in life-threatening violence but did not explain it. Why are handguns, a  
18 minority of all firearms, responsible for three-quarters of all firearms deaths? Why are  
19 handguns the overwhelmingly predominant firearm used in armed robbery?

20 This is a matter of simple criminal logistics. Most firearms assaults and almost all  
21 firearms robberies take place outside the offender's home, so that using a firearm in  
22 crime requires transporting it to a non-home location. But carrying a loaded shotgun to a  
23 commercial location for a robbery or to somebody else's home or on the street while  
24 looking for a target is a warning to potential victims and a red flag to passersby and to  
25 any law enforcement personnel that the armed pedestrian is not on an ordinary errand.  
26 Other pedestrians and motorists can avoid the visibly armed person and police can ask  
27 questions and subject the visibly armed person to identity checks and surveillance.

28 <sup>5</sup> Newton, George and Franklin E. Zimring, *Firearms and Violence in American Life*, staff report submitted to the National Commission on Causes and Prevention of Violence, Washington D.C.: Government Printing Office (1969) at p. 87 (citations in original omitted).

<sup>6</sup> Zimring, Franklin E. and Gordon Hawkins, *The Citizen's Guide to Gun Control* (1986) at p. 123. A more recent compendium lists 47 states with special permits, see [www.lcav.org](http://www.lcav.org).



1 But the person with a concealed handgun in his pocket generates no special notice  
2 until the weapon appears at his criminal destination. The robber or assaulter looks no  
3 different from any other user of common public spaces. And this ability to escape special  
4 scrutiny is the advantage that makes the concealed handgun into the dominant weapon of  
5 choice for gun criminals and a special danger to government efforts to keep public spaces  
6 safe and secure.

7 The necessity of carrying guns to crime sites without detection is one reason why  
8 the National Violence Commission research reported that 86% of all the firearms used in  
9 all assaults were handguns and an astonishing 96% of all firearms robberies were  
10 committed with handguns in the ten large cities the task force surveyed.<sup>7</sup> What that  
11 robbery percentage means is that the problem of gun robbery in American cities is almost  
12 exclusively a problem of concealable handguns.

13 The stringent requirements that California and San Diego County impose on  
14 persons wishing to have permits to carry loaded and concealed guns have two strategic  
15 objectives. The first and most important is to restrict drastically the number of persons  
16 secretly armed on the streets of San Diego County—to just over a thousand in a county of  
17 over three million population in 2009, as shown in Figure 1 (attached as Appendix B).

18 Figure 1 shows the current control of the volume of California concealed weapons.  
19 (CCW) permits and the huge stakes of shifting to the standards asserted as rights by the  
20 plaintiffs in this litigation. There are over two million adults and 1,223 permits in  
21 San Diego County at present, a ratio of one permit for every 1,892 adults—carrying a  
22 concealed weapon is far less than a one in one thousand proposition. Under the system  
23 urged in this litigation, over 90% of these adults could have licenses if they wanted them,  
24 and most citizens would face a difficult choice because they would have to decide  
25 between being armed when so many other people might be secretly carrying guns and  
26 staying unarmed. This is the dilemma that the high standards for and rarity of CCW  
27 permits in San Diego avoids.

28 <sup>7</sup>Newton, George and Franklin E. Zimring (1969), *Firearms and Violence in American Life*, at Figure 8-1, p. 49.

1 Making the carrying of hidden deadly weapons into a very rare privilege enables  
2 citizens not to worry that they must choose between carrying a gun themselves or being  
3 unarmed in public spaces where many strangers are secretly armed. Restricting the  
4 publicly entitled carriers of concealed handguns to a tiny number also reinforces the  
5 practical monopoly of armed force by the police. And the police are one of the primary  
6 groups protected by small rates of carrying concealed guns since more than 90% of  
7 killings of police are with guns.<sup>8</sup>

8 The second strategic aim of a permit-to-carry requirement is to screen those  
9 persons who do have special needs for concealed guns to make sure they will not misuse  
10 the guns they carry. This kind of risk screening explains the good character, minimum  
11 age and lack of criminal record requirements. But the central reason to require a good  
12 reason for needing a gun is to reduce the number of secretly armed citizens on the streets  
13 and sidewalks of one of the biggest urban areas in the United States.

14 The State of California and the County of San Diego believe that it would threaten  
15 the public health and safety to have hundreds of thousands of people in San Diego  
16 carrying loaded handguns that the people who share the streets and stores and parks of  
17 San Diego cannot see.

18 Is this public choice consistent with *D.C. v. Heller's* conferral of a right to handgun  
19 ownership under the Second Amendment? San Diego has never tried to restrict home  
20 possession, so it obviously believes that public places call for different presumptive  
21 policies, and history is on San Diego's side. Special restrictions on carrying concealed  
22 weapons are venerable and almost universal. Even the plaintiffs in this suit do not  
23 question the legitimacy of a special license for carrying weapons. The central question is  
24 whether public concealed weapons can be restricted even if possession in the home is  
25 protected by *Heller*.

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27 ///

28 <sup>8</sup>U.S. Department of Justice, Federal Bureau of Investigation, *Law Enforcement Officers Killed and Assaulted* (2008), Table 27.



The right of home possession announced in the *Heller* case does not require

So government must be involved in public space regulation in a way that is not necessary in the privacy of individual homes. This is why concealed weapons laws are the oldest form of legal regulation of gun use and the most common. There is a public choice that must be made to reduce the number of persons carrying concealed weapons by limiting licenses. But without a general rule on the standard for licenses, there is no way that individual preferences for or against high rates of permits can be translated into a regulatory framework.

I declare under penalty of perjury that the foregoing is true and correct. Executed at NEW YORK, NY. this 30th of September 2010.

Franklin E. Zimring  
FRANKLIN E. ZIMRING

TABLE OF ATTACHMENTS

Attachment A	Curriculum Vita of Zimring	000001-000019
Attachment B	Figure 1 – Population and California Concealed Weapon (CCW) Permits. San Diego County 2009	000020



**Edward Peruta, et al.**

**v.**

**County of San Diego, et al.**

**USDC 09cv2371-IEG(BLM)**

**Declaration of  
Franklin E. Zimring**

**ATTACHMENT A**

**FRANKLIN E. ZIMRING**

14 September 2010

<b>PERSONAL</b>	Born 1942, Los Angeles, California; married; two adult children.
<b>EDUCATION</b>	Los Angeles Public Schools; B.A. with Distinction, Wayne State University (1963); J.D. <i>cum laude</i> , University of Chicago (1967).
<b>PRESENT POSITION</b>	<b>WILLIAM G. SIMON PROFESSOR OF LAW; WOLFEN DISTINGUISHED SCHOLAR</b> and <b>CHAIR</b> , Criminal Justice Research Program, Institute for Legal Research (formerly the Earl Warren Legal Institute), Boalt Hall School of Law, University of California, Berkeley.
<b>OTHER WORK</b>	<p><b>Principal Investigator</b>, Center on Culture, Immigration and Youth Violence Prevention (2005-).</p> <p><b>DIRECTOR</b>, Earl Warren Legal Institute (1983-2002).</p> <p><b>FACULTY OF LAW</b>, University of Chicago (1967-85): <b>KARL N. LLEWELLYN PROFESSOR OF JURISPRUDENCE</b> (1982-85) and <b>DIRECTOR</b>, Center for Studies in Criminal Justice (1975-85).</p> <p><b>MEMBER</b>, MacArthur Foundation Research Program on Adolescent Development and Juvenile Justice (1997-2007).</p> <p><b>FELLOW</b>, Center for Advanced Studies in the Behavioral Sciences, Stanford, California (1979-80).</p> <p><b>RAPPORTEUR</b>, Task Force on Sentencing Policy for Young Offenders, Twentieth Century Fund (1978).</p> <p><b>VISITING PROFESSOR OF LAW</b>, University of California, Irvine (2004), University of South Africa (1993), University of California, Berkeley (1983-85), Yale University (1973), and University of Pennsylvania (1972).</p> <p><b>DIRECTOR OF RESEARCH</b>, Task Force on Firearms, National Commission on the Causes and Prevention of Violence (1968-69).</p> <p><b>CONSULTANT</b>: American Bar Foundation, Police Foundation, National Commission on Reform of Federal Criminal Laws, Institute for Defense Analysis, Department of Justice, Rand Corporation, Abt Associates, Federal Parole Commission, Federal Bureau of Prisons, Federal Bureau of Investigation, General Accounting Office, Canadian Institute for Advanced Studies, States of Alaska, California, Nebraska, Illinois, Virginia, and Washington, Cities of Chicago, New York and San Francisco.</p>
<b>ADVISORY POSTS</b>	<p><b>CURRENT</b>: Campaign for Youth Justice (2007-); California Attorney General's Office (2001-); National Policy Committee, American Society of Criminology (1989-91 and 1993-); Board of Directors, Illinois Youth Services Association (Honorary) (1977-); Advisory Committee, National Pre-Trial Services Association (1975-).</p> <p><b>PAST</b>: Asian Pacific Violence Prevention Center, National Council on Crime and Delinquency (2001-2005); Advisory Committee, Sentencing Project, American Law Institute (2001-2003); Criminal Justice Policy Group, Advisory Board, National Campaign Against Youth Violence (2000-2002); Expert Panel Member, U.S. Department of Transportation, National Highway Traffic Safety Administration Panel on Crash Risk of Alcohol-Involved Driving (1994-2002); Expert Panel Member, U.S. Department of Education Panel on Safe, Disciplined, and Drug-Free Schools (1998-2001); National Research Council Panel on Juvenile Crime: Prevention, Intervention, and Control (1998-2001); Advisory Board, Center on Crime, Communities, and Culture, Open Society Institute (1998-2000); Affiliated Expert, Center for Gun Policy and Research, Johns Hopkins University (1995-98); Gun Violence Advisory Group, American College of Physicians (1995-98); Advisory Committee, Violent and Serious</p>

000001



Juvenile Offender Project, National Council on Crime and Delinquency (1994-1997); Panel on NIH Research on Anti-Social, Aggressive, and Violence-Related Behaviors and their Consequences (1997-); Task Force on Future Directions for the National Archive of Criminal Justice Data, Bureau of Justice Statistics, Department of Justice (1995); Panel on Antisocial, Aggressive, and Violence-Related Behaviors and Their Consequences, National Institute of Health (1993-94); Panel on Understanding and Control of Violent Behavior, National Research Council, National Academy of Sciences (1989-91); Research Advisory Committee, California Attorney General (1983-1990); Law Enforcement Committee, California Governor's Policy Council on Drug and Alcohol Abuse (1989-91); National Research Council, Working Group Crime and Violence (1985-88); Internal Revenue Service, Advisory Group Taxpayer Compliance Research (1983-87); Board of Directors, Eisenhower Foundation for the Prevention of Violence (1981-84); U.S. Secret Service Advisory Committee on Protection of the President (1981-82); Assembly of Behavioral and Social Sciences, National Academy of Sciences (1977-80); Executive Committee, Illinois Academy of Criminology (1968-71, 1977-78); Advisory Committee, Assessment Center for Alternatives to Juvenile Courts (1977-78) (chairman); Advisory Committee, Law and Social Science Program, National Science Foundation (1976-77); Advisory Committee, Vera Institute of Justice, Court Employment Project Evaluation (1976-77) (chairman); Panel on Deterrence and Incapacitation, National Academy of Sciences (1975-77); Legal Committee, American Civil Liberties Union, Illinois Branch (1967-70).

**EDITORIAL  
BOARDS**

CURRENT: Punishment and Society (1998-); Crime and Justice: An Annual Review of Research (1979-90, 1998-); Western Criminology Review (1997-); Buffalo Criminal Law Review (1996-); Homicide Studies (1996-); The Prison Journal (1992-); Journal of Research in Crime and Delinquency (1976-84, 1990-); Federal Sentencing Reporter (1988-); Studies in Crime and Justice (1980-); Journal of Criminal Justice (1978-).

PAST: Law and Society Review (1988-1998); British Journal of Criminology (1988-1996); Journal of Quantitative Criminology (1984-1989); Ethics, (1985-87); Encyclopedia of Crime and Justice (1979-83); Evaluation Quarterly (1976-84); Law and Behavior (1976-85).

**HONORS**

Edwin H. Sutherland Award, American Society of Criminology (2007); August Vollmer Award, American Society of Criminology (2006); Notable Book of the Year, *The Economist* (2003); Society of Research on Adolescence, Biannual Book Award (2002); Pass Award, National Council on Crime and Delinquency (1999); Donald Cressey Award, National Council on Crime and Delinquency (1995); Choice, Outstanding Academic Book Citation (1995 and 1982); Paul Tappan Award, Western Society of Criminology (1994); Fellow, American Society of Criminology (1993); Distinguished Alumni Award, Wayne State University (1989); Bustin Prize for Legal Research, University of Chicago (1981); Cooley Lecturer, University of Michigan Law School (1980); National Distinguished Alumnus Award, Delta-Sigma-Rho (1977); Ten Law Professors Who Shape the Future, *Time Magazine* (1977); Civilian Award of Merit for 1975, Chicago Crime Commission; Gavel Award Certificate of Merit, American Bar Association (1973).

**MEMBER**

American Academy of Arts and Sciences (1990-); California Bar Association (1968-); Order of the Coif (1967-); Phi Beta Kappa (1964-).

**BOOKS AND MONOGRAPHS**

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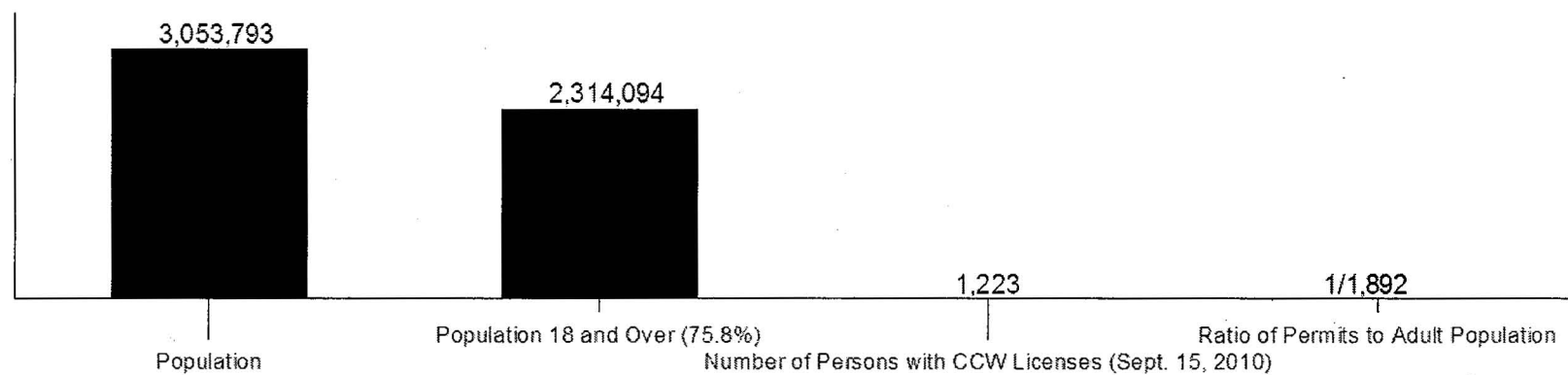
**Edward Peruta, et al.**  
**v.**  
**County of San Diego, et al.**  
**USDC 09cv2371-IEG(BLM)**

**Declaration of**  
**Franklin E. Zimring**

**ATTACHMENT B**



Figure 1. Population and California Concealed Weapon (CCW) Permits, San Diego County 2009.



Sources: Population, U.S. Census Quick Facts about San Diego County 2009 (available at <http://quickfacts.census.gov/qfd/states/06/06073.html>); CCW permits, Communication from Sheriff of San Diego County, September 15, 2010.