

Donald E.J. Kilmer, Jr., (SBN: 179986)
LAW OFFICES OF DONALD KILMER
A Professional Corporation
1645 Willow Street, Suite 150
San Jose, California 95125
Telephone: 408/264-8489
Facsimile: 408/264-8487
E-Mail: Don@DKLawOffice.com

Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

RICHARD ENOS, JEFF BASTASINI,
LOUIE MERCADO, WALTER GROVES,
MANUEL MONTEIRO, EDWARD
ERIKSON, VERNON NEWMAN, JEFF
LOUGHRAN and WILLIAM EDWARDS,

Plaintiffs,

vs.

ERIC HOLDER, as United States Attorney
General, and ROBERT MUELLER, III, as
Director of the Federal Bureau of
Investigation,

Defendants.

CASE NO.: _____

COMPLAINT AND REQUEST FOR
INJUNCTIVE/DECLARATORY RELIEF

VIOLATIONS OF THE FIRST, SECOND,
FIFTH, and TENTH AMENDMENTS OF
THE UNITED STATES CONSTITUTION

18 U.S.C. § 921 *et seq.*

18 U.S.C. § 922 *et seq.*

18 U.S.C. § 925A

42 U.S.C. §§ 1983, 1988

PARTIES

1. Plaintiff RICHARD ENOS, is an individual who is a citizen/resident of the State of California. ENOS lives in San Joaquin County.
2. Plaintiff JEFF BASTASINI, is an individual who is a citizen/resident of the State of California.
3. Plaintiff LOUIE MERCADO, is an individual who is a citizen/resident of the State of California.

1 4. Plaintiff WALTER GROVES, is an individual who is a citizen/resident of the State of
2 California.

3 5. Plaintiff MANUEL MONTEIRO, is an individual who is a citizen/resident of the State of
4 California.

5 6. Plaintiff EDWARD ERIKSON, is an individual who is a citizen/resident of the State of
6 California.

7 7. Plaintiff VERNON NEWMAN, is an individual who is a citizen/resident of the State of
8 California.

9 8. Plaintiff JEFF LOUGHRAN, is an individual who is a citizen/resident of the State of
10 North Dakota.

11 9. Plaintiff WILLIAM EDWARDS, is an individual who is a citizen/resident of the State of
12 California.

13 10. Defendant ERIC HOLDER is the United States Attorney General and is charged with
14 interpretation and enforcement of 18 U.S.C. §§ 921 *et seq.* and 922 *et seq.*

15 11. Defendant ROBERT MUELLER, III is the Director of the Federal Bureau of
16 Investigation and is charged with interpretation and enforcement of 18 U.S.C. §§ 921 *et*
17 *seq.* and 922 *et seq.*

18 **JURISDICTION AND VENUE**

19 12. This Court has jurisdiction over the lawsuit because the action arises under 18 U.S.C. §§
20 921 *et seq.*, 922 *et seq.* and 925A.

21 13. As this action arises under the United States Constitution this Court also has jurisdiction
22 pursuant to 28 U.S.C. § 1331.

23 14. As the Plaintiffs are seeking declaratory relief, this Court has jurisdiction over this action
24 pursuant to 28 U.S.C. §§ 2201 and 2202.

25 15. Venue for this action is properly in this District pursuant to 28 U.S.C. § 1391.

26 16. All conditions precedent, including exhaustion of administrative remedies where
27 required, have been performed, have occurred, are futile or unnecessary where the
28 government infringes on a fundamental right.

FACTS

17. The State of California works in conjunction with the Federal Government to interpret statutes and implementing regulations that restrict the “right to keep and bear arms” of people convicted of Misdemeanor Crimes of Domestic Violence.

18. The Federal Government’s definition of Misdemeanor Crimes of Domestic Violence is found at 18 U.S.C. § 921(a)(33):

(33) (A) Except as provided in subparagraph (C), the term "misdemeanor crime of domestic violence" means an offense that--

(i) is a misdemeanor under Federal or State law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

(B) (i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter [18 USCS § § 921 et seq.], unless--

(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(aa) the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter [18 USCS §§ 921 et seq.] if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

////

1 19. It is federal criminal offense for any person to sell or otherwise dispose of any firearm to
2 a person who has been convicted of a Misdemeanor Crime of Domestic Violence. 18
3 U.S.C. § 922(d)(9).

4 20. It is federal criminal offense for any person who has been convicted of a Misdemeanor
5 Crime of Domestic Violence to possess a firearm. 18 U.S.C. § 922(g)(9).

6 21. Thus Federal Law imposes a lifetime ban on the “right to keep and bear arms” for persons
7 convicted of Misdemeanor Crimes of Domestic Violence, subject to the individual states’
8 power to restore this fundamental civil right under state law.

9 22. Federal Law also provides a means for felons to have their “right to keep and bear arms”
10 restored under procedures promulgated and implemented by the Attorney General. 18
11 U.S.C. § 925(c).

12 23. California Penal Code § 12021(c)(1) sets forth a list of specific crimes that subject a
13 person convicted of certain misdemeanors to a ten (10) year prohibition against owning,
14 possessing and purchasing firearms (and ammunition). This list includes, but is not
15 limited to the following Misdemeanor Crimes of Domestic Violence:

16 a. Battery Against a Spouse/Cohabitant. CA Penal Code § 243(e).

17 b. Corporal Injury to Spouse/Cohabitant. CA Penal Code § 273.5.

18 24. Pursuant to Penal Code § 12021(c)(1), the State of California has clearly and
19 unequivocally set forth a policy of limiting firearms prohibitions, for persons convicted of
20 Misdemeanor Crimes of Domestic Violence, to a ten (10) year period such that by the
21 passage of time the misdemeanants’ “right to keep and bear arms” is restored, without
22 qualification, by operation of law.

23 25. California Penal Code § 12021(c)(3) also provides the means for a person convicted of a
24 Misdemeanor Crime of Domestic Violence, prior to the date the state law went into
25 effect, to have a Superior Court Judge restore the fundamental “right to keep and bear
26 arms” on a case by case basis.

27 26. Even though The State of California has a policy of restoring the “right to keep and bear
28 arms” through a hearing process and by operation of law (through the passage of time),

1 the Federal Government refuses to recognize California's restoration of rights and
2 rehabilitation policies.

3 27. As a direct consequence of the Federal Government's refusal to recognize California's
4 restoration and rehabilitation policies Plaintiffs herein (and all other persons similarly
5 situated) continue to be subject to a lifetime prohibition of the "right to keep and bear
6 arms" under Federal Law.

7 28. This interpretation of the law by the Federal Government results in five (5) wrongful and
8 unconstitutional consequences:

- 9 a. Plaintiffs (and all other persons similarly situated) are subject to federal criminal
10 prosecution if they attempt to exercise their fundamental "right to keep and bear
11 arms" after the State of California has restored their rights.
- 12 b. Plaintiffs (and all other persons similarly situated) cannot lawfully purchase a
13 firearm to exercise their fundamental "right to keep and bear arms" because they
14 cannot pass the background check required by state and federal law.
- 15 c. Plaintiffs (and all other persons similarly situated) are denied a federal statutory
16 remedy to restore their "right to keep and bear arms" resulting in a denial of their
17 right to petition the their government for redress of grievances.
- 18 d. Plaintiffs, as misdemeanants, (and all other persons similarly situated) are denied
19 a federal statutory remedy to restore their "right to keep and bear arms" even as
20 convicted felons have a statutory right to restore their rights under 18 U.S.C. §
21 925(c), thus resulting in a *de facto* denial of equal protection of the law.
- 22 e. The federal government has usurped the power retained by the State of California,
23 and the people, for defining a misdemeanor crime of domestic violence and
24 defining the procedures for restoration of the "right to keep and bear arms"
25 following a conviction for a misdemeanor crime of domestic violence.

26 29. Plaintiff ENOS:

- 27 a. On or about July 15, 1991, Plaintiff RICHARD ENOS plead *nolo contendere* and
28 was convicted of a misdemeanor violation of California Penal Code § 273.5 (a).

- 1 b. In 1993 the California Legislature amended Penal Code § 12021 and added Penal
2 Code § 273.5 to the list of misdemeanors which prohibit a person from
3 acquiring/possessing a firearm for 10 years after the date of conviction.
- 4 c. On September 13, 1994, the Congress passed the Violence Against Women Act,
5 and in 1996 Congress amended the act to impose a lifetime prohibition against the
6 acquisition/possession of firearms by misdemeanants convicted of Domestic
7 Violence. See: 18 U.S.C. §§ 921 and 922 *et seq.*
- 8 d. In March of 1999, Plaintiff RICHARD ENOS, petitioned for a record clearance
9 under Penal Code § 1203.4.
- 10 e. On May 25, 1999, Plaintiff RICHARD ENOS's petition was granted by the
11 Honorable Ray E. Cunningham, Superior Court Judge. Plaintiff's plea of guilty
12 was withdrawn, a plea of not guilty was entered and the court dismissed the case.
- 13 f. On May 12, 2000, Plaintiff RICHARD ENOS filed a PETITION FOR
14 RESTORATION OF CIVIL RIGHTS (FIREARM POSSESSION).
- 15 g. On Jun 16, 2000, the PETITION FOR RESTORATION OF CIVIL RIGHTS
16 (FIREARM POSSESSION) was granted by the Honorable Thang N. Barrett.
- 17 h. In February of 2001, Plaintiff RICHARD ENOS caused a letter to be sent to the
18 California Department of Justice referencing the order by Judge Barrett restoring
19 his rights. At that point in time the State of California had cleared RICHARD
20 ENOS to own/possess firearms.
- 21 i. In August of 2004, Plaintiff RICHARD ENOS was denied a firearm purchase and
22 advised by the State of California that the denial was being maintained by U.S.
23 Department of Justice, Federal Bureau of Investigation, National Instant Criminal
24 Background Check System.
- 25 j. As of October 25, 2010, Plaintiff RICHARD ENOS is permitted to acquire and
26 possess firearms under the laws of the State of California.
- 27 k. As of October 25, 2010, Plaintiff RICHARD ENOS is prohibited from acquiring
28 and possessing firearms due to threat of criminal prosecution under federal law.

1 30. Plaintiffs BASTASINI, MERCADO, GROVES and MONTEIRO:

2 a. Plead or were convicted of misdemeanors under California Penal Code § 273.5.

3 i. Plaintiff BASTASINI plead no contest (and/or guilty) to a misdemeanor
4 charge of California Penal Code § 273.5 on March 25, 1991. He was not
5 represented by counsel.

6 ii. Plaintiff LOUIE MERCADO plead no contest (and/or guilty) to a
7 misdemeanor charge of California Penal Code § 273.5 on December 17,
8 1990. He was represented by counsel.

9 iii. Plaintiff WALTER GROVES plead no contest (and/or guilty) to a
10 misdemeanor charge of California Penal Code § 273.5 on January 12,
11 1990. He was represented by counsel.

12 iv. Plaintiff MANUEL MONTEIRO plead no contest (and/or guilty) to a
13 misdemeanor charge of California Penal Code § 273.5 on May 27, 1992.

14 b. In 1993 the California Legislature amended Penal Code § 12021 and added Penal
15 Code § 273.5 to the list of misdemeanors which prohibit a person from
16 acquiring/possessing a firearm for 10 years after the date of conviction.

17 c. On September 13, 1994, Congress passed the Violence Against Women Act, and
18 in 1996 Congress amended the act to impose a lifetime ban on the
19 acquisition/possession of firearms by misdemeanants convicted of Domestic
20 Violence. 18 U.S.C. §§ 921 and 922 *et seq.*

21 d. Plaintiffs JEFF BASTASINI, LOUIE MERCADO, WALTER GROVES and
22 MANUEL MONTEIRO have not availed themselves of the relief provisions
23 under California Penal Code § 12021(c)(3) as this would be a futile act based
24 upon the passage of ten (10) years and upon the Federal Government's current
25 interpretation of 18 U.S.C. §§ 921 and 922 *et seq.*

26 e. Plaintiffs JEFF BASTASINI, LOUIE MERCADO, WALTER GROVES and
27 MANUEL MONTEIRO have availed themselves of the provisions of California
28 Penal Code § 1203.4. Their petitions were granted.

1 f. As of October 25, 2010, Plaintiffs JEFF BASTASINI, LOUIE MERCADO,
2 WALTER GROVES and MANUEL MONTEIRO are permitted to acquire and
3 possess firearms under the laws of the State of California.

4 g. As of October 25, 2010, Plaintiffs JEFF BASTASINI, LOUIE MERCADO,
5 WALTER GROVES and Plaintiff MANUEL MONTEIRO are prohibited from
6 acquiring and possessing firearms due to a threat of criminal prosecution under
7 federal law.

8 31. Plaintiffs EDWARD ERIKSON and VERNON NEWMAN:

9 a. Plead or were convicted of domestic violence misdemeanors.

10 i. Plaintiff ERIKSON's date of conviction was 1996.

11 ii. Plaintiff NEWMAN's date of conviction was 1997.

12 b. In 1993 the California Legislature amended Penal Code § 12021 to create a list of
13 domestic violence misdemeanors which prohibit a person from
14 acquiring/possessing a firearm for 10 years after the date of conviction.

15 c. On September 13, 1994, Congress passed the Violence Against Women Act, and
16 in 1996 Congress amended the act to impose a lifetime ban on the
17 acquisition/possession of firearms by misdemeanants convicted of Domestic
18 Violence. 18 U.S.C. §§ 921 and 922 *et seq.*

19 d. Plaintiffs ERIKSON and NEWMAN cannot avail themselves of the relief
20 provisions under California Penal Code § 12021(c)(3) by the terms of that statute.
21 (i.e., their convictions occurred after 1993.)

22 e. Plaintiffs ERIKSON and NEWMAN have availed themselves of the provisions of
23 California Penal Code § 1203.4. Their petitions were granted.

24 f. As of October 25, 2010, Plaintiffs ERIKSON and NEWMAN are permitted to
25 acquire and possess firearms under the laws of the State of California.

26 g. As of October 25, 2010, Plaintiff ERIKSON and NEWMAN are prohibited from
27 acquiring and possessing firearms due to a threat of criminal prosecution under
28 federal law.

32. Plaintiff JEFF LOUGHRAN was convicted of a misdemeanor, California Penal Code § 242, on May 26, 1992.

a. In 1993 the California Legislature amended Penal Code § 12021 to create a list of misdemeanors which prohibit a person from acquiring/possessing a firearm for 10 years after the date of conviction.

b. On September 13, 1994, Congress passed the Violence Against Women Act, and in 1996 Congress amended the act to impose a lifetime ban on the acquisition/possession of firearms by misdemeanants convicted of Domestic Violence. 18 U.S.C. §§ 921 and 922 *et seq.*

c. On May 26, 1994, Plaintiff LOUGHRAN was granted relief under California Penal Code § 1203.4.

d. On November 23, 1998, Plaintiff LOUGHRAN was granted a motion to vacate his 1992 judgment of conviction pursuant to a *Writ of Error Coram Nobis*.

e. Plaintiff LOUGHRAN has not availed himself of the relief provisions under California Penal Code § 12021(c)(3) as this would be a futile act based upon passage of 10 years time and the Federal Government's current interpretation of 18 U.S.C. §§ 921 and 922 *et seq.*

f. As of October 25, 2010, Plaintiff LOUGHRAN is permitted to acquire and possess firearms under the laws of California and North Dakota.

g. As of October 25, 2010, Plaintiff LOUGHRAN is prohibited from acquiring and possessing firearms due to a threat of criminal prosecution under federal law.

33. Plaintiff WILLIAM EDWARDS:

a. Plaintiff EDWARDS suffered a conviction for Penal Code § 415 (Disturbing the Peace) on or about July 15, 2005.

b. Since that date, Plaintiff EDWARDS has been denied the right to own, possess or purchase firearms.

c. Plaintiff Plaintiff EDWARDS is not prohibited under California Law from possessing or purchasing firearms.

d. Penal Code § 415 [Disturbing the Peace] states:

Any of the following persons shall be punished by imprisonment in the county jail for a period of not more than 90 days, a fine of not more than four hundred dollars (\$400), or both such imprisonment and fine:

- (1) Any person who unlawfully fights in a public place or challenges another person in a public place to fight.
- (2) Any person who maliciously and willfully disturbs another person by loud and unreasonable noise.
- (3) Any person who uses offensive words in a public place which are inherently likely to provoke an immediate violent reaction.

e. California Penal Code § 415 is not a crime of domestic violence under 18 U.S.C. § 921 and/or 922 *et seq.*

f. California does have specific vigorously enforced Domestic Violence statutes:

- i. Penal Code § 243(e).
- ii. Penal Code § 273.5.

g. Plaintiff EDWARDS has been denied the right to purchase or possess firearms solely based on the Federal Government's wrongful application and/or interpretation of 18 U.S.C. §§ 921 and 922 *et seq.*

h. But for this wrongful interpretation, Plaintiff EDWARDS would exercise his "right to keep and bear arms."

FIRST CLAIM - Declaratory Relief

34. Paragraphs 1 through 31 are incorporated by reference as if fully set forth herein.

35. Pursuant to 18 U.S.C. § 921(a)(33) Plaintiff RICHARD ENOS has not been convicted of a crime of domestic violence under any one of three possible theories:

- a. RICHARD ENOS was not apprized of the possibility of losing his firearm rights when he plead no contest to a misdemeanor crime of Domestic Violence back in 1991, as there was no federal or state law prohibiting Domestic Violence misdemeanants from acquiring/possessing firearms upon conviction. Therefore

1 he could not make a knowing/intelligent waiver of his right to a trial.

2 b. RICHARD ENOS applied for and was granted a restoration of his rights under
3 California Penal Code § 12021(c)(3) by a Superior Court Judge in Santa Clara
4 County California.

5 c. And finally, the State of California restores the right to possess firearms for
6 Domestic Violence misdemeanants 10 years after conviction, by operation of law.

7 36. Defendants have misinterpreted 18 U.S.C. § 921(a)(33) so as to deprive Plaintiff
8 RICHARD ENOS of the “right to keep and bear arms” he would otherwise enjoy if the
9 Defendants correctly applied the law.

10
11 **SECOND CLAIM – Declaratory Relief**

12 37. Paragraphs 1 through 31 are incorporated by reference as if fully set forth herein.

13 38. Pursuant to 18 U.S.C. § 921(a)(33) Plaintiffs JEFF BASTASINI, LOUIE MERCADO,
14 WALTER GROVES and MANUEL MONTEIRO have not been convicted of a crime of
15 domestic violence under any one of two possible theories:

16 a. JEFF BASTASINI, LOUIE MERCADO, WALTER GROVES and MANUEL
17 MONTEIRO were not apprized of the possibility of losing their firearm rights
18 when they plead no contest to a misdemeanor crime of Domestic Violence as
19 there was no federal or state law prohibiting Domestic Violence misdemeanants
20 from acquiring/possessing firearms upon conviction. Therefore they could not
21 make a knowing/intelligent waiver of their right to a trial.

22 b. And, the State of California restores the right to possess firearms for Domestic
23 Violence misdemeanants 10 years after conviction, by operation of law.

24 39. Defendants have misinterpreted 18 U.S.C. § 921(a)(33) so as to deprive Plaintiffs JEFF
25 BASTASINI, LOUIE MERCADO, WALTER GROVES and MANUEL MONTEIRO of
26 the “right to keep and bear arms” they would otherwise enjoy if the Defendants correctly
27 applied the law.

28 ////

THIRD CLAIM – Declaratory Relief

40. Paragraphs 1 through 31 are incorporated by reference as if fully set forth herein.

41. Pursuant to 18 U.S.C. § 921(a)(33) Plaintiffs EDWARD ERIKSON and VERNON NEWMAN have not been convicted of a crime of domestic violence because the State of California restores the right to possess firearms for Domestic Violence misdemeanants 10 years after conviction, by operation of law.

42. Defendants have misinterpreted 18 U.S.C. § 921(a)(33) so as to deprive Plaintiffs EDWARD ERIKSON and VERNON NEWMAN of the “right to keep and bear arms” they would otherwise enjoy if the Defendants correctly applied the law.

FOURTH CLAIM – Declaratory Relief

43. Paragraphs 1 through 31 are incorporated by reference as if fully set forth herein.

44. Pursuant to 18 U.S.C. § 921(a)(33) Plaintiff JEFF LOUGHRAN has not been convicted of a crime of domestic violence under any one of three possible theories:

a. LOUGHRAN was not apprized of the possibility of losing his firearm rights when he plead no contest to a misdemeanor crime of Domestic Violence as there was no federal or state law prohibiting Domestic Violence misdemeanants from acquiring/possessing firearms upon conviction. Therefore he could not make a knowing/intelligent waiver of his right to a trial.

b. LOUGHRAN applied for and was granted an order vacating his original judgment of conviction pursuant to a *writ of error coram nobis* .

c. And finally, the State of California restores the right to possess firearms for Domestic Violence misdemeanants 10 years after conviction, by operation of law.

45. Defendants have misinterpreted 18 U.S.C. § 921(a)(33) so as to deprive Plaintiff LOUGHRAN of the “right to keep and bear arms” he would otherwise enjoy if the Defendants correctly applied the law.

////

////

FIFTH CLAIM - Declaratory Relief

46. Paragraphs 1 through 31 are incorporated by reference as if fully set forth herein.

47. Pursuant to 18 U.S.C. § 921(a)(33) Plaintiff EDWARDS has not been convicted of a crime of domestic violence, so has to prohibit him from acquiring/possessing firearms because the crime of disturbing the peace does not contain as an element of the crime:

a. The use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

48. Defendants have misinterpreted 18 U.S.C. § 921(a)(33) so as to deprive Plaintiff EDWARDS of the “right to keep and bear arms” he would otherwise enjoy if the Defendants correctly applied the law.

SIXTH CLAIM – Second Amendment

49. Paragraphs 1 through 46 are incorporated by reference as if fully set forth herein.

50. The Second Amendment to the United States Constitution provides in part that: *“the right of the people to keep and bear Arms shall not be infringed.”*

51. As currently written and enforced, 18 U.S.C. §§ 921(a)(33), 922(d)(9) and 922(g)(9) violates the Second Amendment to the United States Constitution because it imposes a lifetime ban on the exercise of a fundamental constitutional “right to keep and bear arms” after conviction of a minor crime.

52. As applied to the facts of this case, the Defendants’ interpretations of 18 U.S.C. §§ 921(a)(33), 922(d)(9) and 922(g)(9) violates the Second Amendment to the United States Constitution because it imposes a lifetime ban on the exercise of a fundamental constitutional “right to keep and bear arms” after conviction of a minor crime.

SEVENTH CLAIM – First Amendment

53. Paragraphs 1 through 46 are incorporated by reference as if fully set forth herein.

54. The First Amendment to the United States Constitution provides in part that: *Congress shall make no law...abridging... the right of the people...to petition the Government for a redress of grievances.*

55. As currently written and enforced, 18 U.S.C. §§ 921(a)(33), 922(d)(9) and 922(g)(9) violates the rights of the Plaintiffs under the First Amendment to the United States Constitution, because it imposes a lifetime ban on the exercise of a fundamental constitutional right for a minor crime without providing a statutory remedy for restoration of that right.

56. As applied to the facts of this case, Defendants' interpretations of 18 U.S.C. §§ 921(a)(33), 922(d)(9) and 922(g)(9) violates the rights of the Plaintiffs under the First Amendment to the United States Constitution, because it imposes a lifetime ban on the exercise of a fundamental constitutional "right to keep and bear arms" after conviction for a minor crime without providing a statutory remedy for restoration of that right.

EIGHTH CLAIM – Tenth Amendment

57. Paragraphs 1 through 46 are incorporated by reference as if fully set forth herein.

58. The Tenth Amendment to the United States Constitution provides: *"The powers not delegated to the Unites States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."*

59. As currently written and enforced, 18 U.S.C. §§ 921(a)(33), 922(d)(9) and 922(g)(9) violates the Tenth Amendment to the United States Constitution because it usurps the States' powers to define and provide for the rehabilitation of minor public offenses.

60. As applied to the facts of this case, the Defendants' interpretations of 18 U.S.C. §§ 921(a)(33), 922(d)(9) and 922(g)(9) violates the Tenth Amendment to the United States Constitution because it usurps the States' powers to define and provide for the rehabilitation of minor public offenses.

61. This usurpation of power by the federal government is directly responsible for the infringement of the Plaintiffs' fundamental "right to keep and bear arms."

NINTH CLAIM – Fifth Amendment “Due Process”

62. Paragraphs 1 through 46 are incorporated by reference as if fully set forth herein.

63. The Fifth Amendment to the United States Constitution provides in part that: *“No person shall... be deprived of life, liberty or property, without due process of law...”*

64. Part of the protection afforded Plaintiffs under the Fifth Amendment Due Process Clause against the federal government is the guarantee of “equal protection” under the law.

65. As currently written and enforced, 18 U.S.C. §§ 921(a)(33), 922(d)(9) and 922(g)(9) violates the Fifth Amendment to the United States Constitution because it imposes a lifetime ban on the exercise of a fundamental constitutional right for a minor crime without providing a statutory remedy for restoration of that right, even though a provision exists in federal law for the restoration of rights by felons. See 18 U.S.C. § 925(c).

66. As applied to the facts of this case, the Defendants' interpretations of 18 U.S.C. §§ 921(a)(33), 922(d)(9) and 922(g)(9) violates the Fifth Amendment to the United States Constitution because it imposes a lifetime ban on the exercise of a fundamental constitutional right for a minor crime without providing a statutory remedy for restoration of that right, even though a provision exists in federal law for the restoration of rights by felons. See 18 U.S.C. § 925(c).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays that this Court will enter judgment as follows:

A. Declaratory and injunctive relief that all Plaintiffs are not subject to the prohibitions set forth in 18 U.S.C. §§ 922(d)(9) and 922(g)(9).

B. Declaratory and injunctive relief that 18 U.S.C. §§ 922(d)(9) and 922(g)(9) are unconstitutional on their face and as applied to all Plaintiffs.

////

1 C. Award Plaintiffs their reasonable attorney fees and costs under 42 U.S.C. §§ 1983, 1988
2 and/or 18 U.S.C. § 925A.

3 D. Such other and further relief as this Court deems just and proper.

4 Respectfully Submitted on October 25, 2010,

5

6

/s/

7 _____
Donald E.J. Kilmer, Jr., (SBN: 179986)
LAW OFFICES OF DONALD KILMER
A Professional Corporation
8 1645 Willow Street, Suite 150
San Jose, California 95125-3030
9 Telephone: 408/264-8489
Facsimile: 408/264-8487
10 E-Mail: Don@DKLawOffice.com

11 Attorney for Plaintiffs

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

CIVIL COVER SHEET

Case 2:10-cv-02911-JAM-EFB Document 1-1 Filed 10/29/10 Page 1 of 2

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

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 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)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> 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 <i>and</i> 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(g)) 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
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

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):

Brief description of cause:

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

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

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

Case 2:10-cv-02911-JAM-EFB Document 1-1 Filed 10/29/10 Page 2 of 2
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
 Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.