

1 Charles Nichols
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6 In Pro Per
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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY: *[Signature]*
FILED

8 United States District Court
9 Central District of California
10

11 Charles Nichols,

12 PLAINTIFF,

13 vs.

14 KAMALA D. HARRIS, Attorney
15 General, in her official capacity as
16 Attorney General of California

17
18 Defendant.
19
20

Case No.: CV-11-9916 SJO (SS)

**NOTICE OF MOTION AND
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

[Fed. R. Civ. Proc. 56]

Date: December 17, 2013
Time: 10:00 am
Crtrm: 23 - 3rd Floor
Magistrate Judge: Suzanne H. Segal
District Judge: S. James Otero
Trial Date: None
Action Filed: November 30, 2011

21
22 **TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:**

23 PLEASE TAKE NOTICE that on Tuesday, December 17, 2013, at 10:00
24 a.m. or as soon thereafter as the matter may be heard, in Courtroom 23, Third Floor
25 of the United States District Court for the Central District of California, 312 North
26 Spring Street Los Angeles, CA 90012-4701, Plaintiff Charles Nichols, In Pro Per,
27 will move this Honorable Court to enter a partial summary judgment in his favor
28 and against Defendant pursuant to Fed. R. Civ. Proc. 56.

1 Plaintiff moves for entry of partial summary judgment against California
2 Penal Code sections 25850, 26350 and 26400 as the material facts in this case are
3 not in dispute, and the challenged laws violate Plaintiff's rights under the Second,
4 Fourth and Fourteenth Amendments to the United States Constitution.

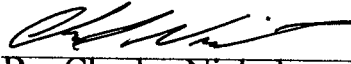
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6 This motion is based upon this notice of motion and motion, the attached
7 memorandum of points and authorities, exhibits, declarations, separate statement
8 of uncontroverted facts and conclusions of law, any material in the Court's files,
9 and any other relevant matter to be considered by the Court.

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11 Attached is a Proposed Order which was also lodged separately and
12 concurrently with this Notice of Motion and Motion.

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14 This motion is made following the conference of counsel pursuant to L.R.
15 7-3 which took place on Tuesday, October 8th 2013.

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20 Dated: November 8, 2013

Respectfully submitted,

21
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23 
24 By: Charles Nichols
25 PLAINTIFF in Pro Per
26 PO Box 1302
27 Redondo Beach, CA 90278
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///
28

United States District Court
Central District of California

Charles Nichols,

PLAINTIFF,

vs.

KAMALA D. HARRIS, Attorney
General, in her official capacity as
Attorney General of California

Defendant.

Case No.: CV-11-9916 SJO (SS)

[PROPOSED] ORDER

[PROPOSED] ORDER

This matter came before the Court on Plaintiff's motion for partial summary judgment. There being no dispute of material fact, and Plaintiff being entitled to summary judgment as a matter of law, the motion is granted.

Judgment shall be entered in favor of Plaintiff and against Defendant.

[PROPOSED] ORDER

1 The Court hereby declares that California Penal Code sections 25850, 26350
2 and 26400 are unconstitutional on their face and as applied to Plaintiff and to
3 persons who are otherwise legally qualified to possess firearms for the purpose of
4 self-defense and for other lawful purposes.

5
6 IT IS ORDERED that California Penal Code sections 25850, 26350 and
7 26400 are declared unconstitutional on their face and as applied to Plaintiff and to
8 persons who are otherwise legally qualified to possess firearms for the purpose of
9 self-defense and for other lawful purposes.

10
11 IT IS FURTHER ORDERED that California Penal Code sections 25850,
12 26350 and 26400 are declared to infringe on the fundamental rights of Plaintiff and
13 to persons who are otherwise legally qualified to possess firearms for the purpose
14 of self-defense and for other lawful purposes and violate (a) The Second
15 Amendment right to openly carry a firearm for the purpose of self-defense and for
16 other lawful purposes; (b) The Fourth Amendment Right to be free from unlawful
17 detention, arrest, prosecution, imprisonment or search of a person and seizure of a
18 firearm when openly carried in non-sensitive public places; (c) The Substantive
19 Due Process and Fourteenth Amendment rights to life, liberty and property and to
20 equal protection.

21
22 IT IS FURTHER ORDERED that the court declares that Penal Code section
23 25850: produces disproportionate effects along racial lines; has a racially
24 disproportionate impact and racially discriminatory intent or purpose; and that
25 racial discrimination has been shown to have been a substantial or motivating
26 factor behind enactment of the law and that Defendant has not met its burden to
27 demonstrate that the law would have been enacted without this factor.

1 IT IS FURTHER ORDERED that the court declares that: Penal Code section
2 25850 is invalid in that and to the extent that it is applied to prohibit private
3 citizens who are otherwise qualified to possess firearms from openly carrying
4 loaded firearms for the purpose of self-defense on their own property, in their
5 vehicles and in non-sensitive public places.
6

7 IT IS FURTHER ORDERED that the court declares that Penal Code section
8 26350 is invalid in that and to the extent that it is applied to prohibit private
9 citizens who are otherwise qualified to possess firearms from openly carrying
10 unloaded handguns for the purpose of self-defense on their own property, in their
11 vehicles and in non-sensitive public places.
12

13 IT IS FURTHER ORDERED that the court declares that Penal Code section
14 26400 is invalid in that and to the extent that it is applied to prohibit private
15 citizens who are otherwise qualified to possess firearms from openly carrying
16 unloaded firearms that are not handguns for the purpose of self-defense on their
17 own property, in their vehicles and in non-sensitive public places.
18

19 IT IS FURTHER ORDERED that the court declares that: unlicensed Open
20 Carry for the purpose of self-defense in non-sensitive public places is the right
21 guaranteed by the Constitution; that firearms openly carried which do not have live
22 ammunition in the firing chamber are unloaded and that possession of matching
23 ammunition with an openly carried unloaded firearm does not make the firearm
24 "loaded" regardless of whether or not the ammunition is attached in any way to the
25 firearm; that no license is required to openly carry a firearm for the purpose of self-
26 defense in non-sensitive public places; that private residential property is not a
27 public place and is not a sensitive public place regardless of whether or not the
28 property is fully or partially enclosed by a fence or barrier, or completely

1 unenclosed; that a private motor vehicle and any attached campers or trailers are
2 not public places and that fully functional loaded firearms may be carried therein
3 and that they do not have to be encased or otherwise enclosed in a container,
4 locked or otherwise, nor must they be carried unloaded.

5
6 IT IS FURTHER ORDERED that Defendant, their agents, servants, officers,
7 employees, and attorneys, and all persons acting in participation or concert with
8 them or under their direction or command, who receive actual notice of the
9 injunction, are permanently enjoined from enforcing or applying California Penal
10 Code sections 25850, 26350 and 26400 including any implementing regulations
11 and/or statutes, against Plaintiff and against any person under their jurisdiction or
12 command, and from taking any actions whatsoever, or permitting any person or
13 entity to take any action whatsoever that in any way affects, impedes, interferes
14 with Plaintiff and any person who is legally able to possess a firearm and they are
15 further ORDERED to immediately suspend and discontinue any investigation, or
16 other proceeding, that may have been commenced under California Penal Code
17 sections 25850, 26350 and 26400 and/or their implementation on or prior to the
18 date of this order.

19 IT IS FURTHER ORDERED that Plaintiff shall recover his cost of suit
20 herein, including but not limited to attorney fees pursuant to 42 U.S.C. § 1988, to
21 the extent allowed by law.

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23 **IT IS SO ORDERED.**

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26 Dated: _____ HONORABLE JUDGE SAMUEL JAMES OTERO
27 UNITED STATES DISTRICT JUDGE
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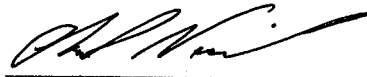
CERTIFICATE OF SERVICE

On this, the 8th day of November, 2013, I caused to be served a copy of the foregoing **NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT** by US Mail on:

Jonathan Michael Eisenberg
Office of the California Attorney General
Government Law Section
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
213-897-6505
213-897-1071 (fax)
jonathan.eisenberg@doj.ca.gov

LEAD ATTORNEY / ATTORNEY TO BE NOTICED representing Kamala D Harris
(Defendant).

Executed this the 8th day of November, 2013 by:



Charles Nichols