

1 **JONATHAN W. BIRDT, SBN 183908**

2 **Law Office of Jonathan W. Birdt**

3 10315 Woodley Ave, Suite 208

4 Granada Hills, CA 91344

5 Telephone: (818) 400-4485

6 Facsimile: (818) 428-1384

7 jon@jonbirdt.com

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 SIGITAS RAULINAITIS,

11 Plaintiff,

12 vs.

13 VENTURA COUNTY SHERIFFS
14 DEPARTMENT,

15 Defendants.

) **CASE NO. CV 13-2605MAN**

)
) **PLAINTIFF'S MOTION FOR**
) **SUMMARY JUDGMENT**

)
) Filed concurrently with Declaration of
) Sigitas Raulinaitis and Separate
) Statement of Facts and Law

)
) June 24th, 2014, at 10:00 a.m.
)
)
)

18
19 **I. INTRODUCTION**

20 The Second Amendment protects the fundamental right of law abiding citizens
21 to bear arms for self-defense, and in California, the only way Plaintiff can exercise
22 that right is with a permit issued by the Sheriff. To date, the Sheriff refuses to issue
23 Plaintiff a permit stating that Plaintiff is not a resident of Ventura. This very simple
24 legal and factual issue is the entirety of this case- can Defendant exercise unfettered
25 discretion to deny Plaintiff his ability to exercise a Fundamental Right.

26 There are essentially three pre-requisites to a permit, residency, good moral
27 character and good cause. The last two are not issues because Plaintiffs good moral
28 character has already been established by the California Supreme court when it

1 admitted him to practice law, and regardless, defendant has twice conducted State and
 2 Federal background checks, the most recent after requesting a continuance of the
 3 TRO hearing to process Plaintiffs' application again and then advising the Court that
 4 more time was needed to resolve the residency issue. The Good Cause is also not an
 5 issue as Defendant has changed his policy to accept self-defense, leaving residency as
 6 the only issue.

7 **II. LEGAL STANDARD**

8 Summary judgment is proper where the pleadings and materials demonstrate
 9 "there is no genuine issue as to any material fact and . . . the movant is entitled to
 10 judgment as a matter of law." Fed. R. Civ. P. 56(c)(2); Celotex Corp. v. Catrett, 477
 11 U.S. 317, 322 (1986). A material issue of fact is a question a trier of fact must
 12 answer to determine the rights of the parties under the applicable substantive law.
 13 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

14 **III. PLAINTIFF HAS A FUNDAMENTAL RIGHT TO BEAR ARMS FOR** 15 **SELF-DEFENSE AND THE ONLY WAY TO EXERCISE THAT RIGHT** 16 **IN CALIFORNIA IS WITH A CCW PERMIT**

17 The United States Supreme Court has clearly stated, with regard to the Second
 18 Amendment, that:

19 "Putting all of these textual elements together, we find that they guarantee the
 20 individual right to possess and carry weapons in case of confrontation."

21 District of Columbia v. Heller, 128 S. Ct. 2783, at 2798 (2008).

22
 23 Again reiterated just two years later:

24 "Self-defense is a basic right, recognized by many legal systems from ancient
 25 times to the present day, and in Heller, we held that individual self-defense is
 26 "the central component" of the Second Amendment right". McDonald v. City
 27 of Chicago (2010) 130 S. Ct. 3020, at 3037.

1 This Principal likewise has already been followed in the Central District
2 wherein Magistrate John E. McDermott found no legal basis for even bringing a
3 motion to dismiss on an almost identical Complaint:

4 In District of Columbia v. Heller, 554 U.S. 570 (2008), the Supreme Court held
5 that the District of Columbia's "absolute prohibition of handguns held and used
6 for self defense in the home" clearly violated the Second Amendment.¹ Id. at
7 628-636. In so holding, the Supreme Court explained that the Second
8 Amendment protects an individual right to "keep and carry arms," and further
9 noted that "the inherent right of self-defense has been central to the Second
10 Amendment right." Id. at 627-629. Thus, the Supreme Court identified in
11 Heller an unequivocal Second Amendment "individual right to possess and
12 carry weapons in case of confrontation." 554 U.S. at 592. In McDonald v. City
13 of Chicago, 130 S.Ct. 3020, 3026 (2010), the Court held that "the Second
14 Amendment right is fully applicable to the States."

15 Ruling Denying Motion to Dismiss, Case 5:13-cv-00673-VAP-JEM.

16 Plaintiff is a law abiding citizen unable to exercise his Fundamental Right to
17 Self-Defense because Defendant refuses to issue him a permit necessary to exercise
18 such right based solely upon an unlawful exercise of discretion. When a fundamental
19 right is recognized, substantive due process forbids infringement of that right "at all,
20 no matter what process is provided, unless the infringement is narrowly tailored to
21 serve a compelling state interest." Reno v. Flores, 507 U.S. 292 (1993) at 301-02
22 (citations omitted).

1 The 9th Circuit Court has adopted an intermediate scrutiny approach to Second
 2 Amendment challenges, not a rational basis approach¹ as previously used by this
 3 Court:

4 After considering the approaches taken by other circuits that considered the
 5 constitutionality of § 922(g)(9), we hold as follows. We adopt the two-step
 6 Second Amendment inquiry undertaken by the Third Circuit in *Marzzarella*,
 7 614 F.3d at 89, and the Fourth Circuit in *Chester*, 628 F.3d at 680, among other
 8 circuits. Applying that inquiry, we hold that § 922(g)(9) burdens conduct
 9 falling within the scope of the Second Amendment's guarantee and that
 10 intermediate scrutiny applies to Chovan's Second Amendment challenge.
 11 Finally, like the First, Fourth, and Seventh Circuits, we apply intermediate
 12 scrutiny....

13 U.S. v. Chovan (9th Cir. 2013) 735 F.3d 1127, 1136

14 15 IV. **ABUSE OF DISCRETION**

16 It is repugnant to Constitutional Jurisprudence to suggest that an elected
 17 official could supplant his own wisdom for that clearly stated by the legislature and
 18 then exercise that discretion to deny Plaintiff the ability to exercise a Fundamental
 19 Right in any lawful manner outside of his home. Under Cantwell v. Connecticut
 20 (1940) 310 U.S. 296, and its progeny, States and localities may not condition a
 21 license necessary to engage in constitutionally protected conduct on the grant of a
 22 license officials have discretion to withhold. Further, a host of prior restraint cases
 23 establish that “the peaceful enjoyment of freedoms which the Constitution
 24 guarantees” may not be made “contingent upon the uncontrolled will of an official.”
 25 Staub v. Baxley (1958) 355 U.S. 313, 322.

26
27
28 ¹ The *Heller* Court did, however, indicate that rational basis review is not appropriate.
U.S. v. Chovan (9th Cir. 2013) 735 F.3d 1127, 1137

1 **V. RESIDENCY**

2 Whether the definition is residency or domicile, Plaintiffs' declaration attached
3 hereto clearly establishes either standard and all of this information was provided to
4 Defendant previously in this case, under oath and was in his possession when he
5 requested permission to process a second application and then advised the parties that
6 he still could not decide residency. Ironically, the Sheriff changed his good cause
7 policy in response to the Peruta decision which is not yet final, but Mr. Peruta was in
8 fact domiciled in Connecticut and travelled to San Diego in his RV staying in a camp
9 ground at the time he sought his permit.

10 Plaintiffs' permanent and primary residence and domicile is Ventura. When
11 away from his Ventura home it is the place he plans on returning and when he is not
12 there he is travelling, at his vacation home, or staying in Santa Clarita as required for
13 work before returning home to Ventura. Plaintiffs official residence with the State of
14 California is Ventura, where he is also registered to vote.

15 **VI. CONCLUSION**

16 Under any standard, Plaintiff is a resident of Ventura and entitled to a
17 concealed weapons permit necessary to exercise his fundamental right and the actions
18 of an elected official to deny his exercise of those rights without any justification are
19 violation of his Constitutional Rights.

20
21 May 12, 2014

/s/

22 _____
23 Jonathan W. Birdt
24
25
26
27
28