

My thoughts after reading a document filed by the County of San Diego.

Here is a link to the document:

<http://ctgunrights.com/00.ca.docs/10.04.10%20MSJ%20Files/Counties%20Points%20and%20Auth%20TOC%20etc..pdf>

A **Separate Statement** of Undisputed Facts has been provided, as has Defendant's Opposition to Plaintiffs' Separate Statement of Undisputed Facts.

If discussions took place in early August 2010, and understandings were reached, why would there be any disagreement on the "UNDISPUTED FACTS".

Plaintiff Peruta further alleges that he was denied because he did not meet **the residency requirement** of the statute as interpreted by Defendant.

Beginning with my initial/first visit to the Sheriff's Department, discussions took place where I was told that I was NOT going to be considered a "RESIDENT" of San Diego County. Because of this issue, I tape recorded the first of two scheduled interviews which were part of the application process.

After the first scheduled interview I made a written request for clarification which was submitted to the Sheriff's Department on two separate occasions on December 5, 2008 and February 9, 2009 along with at least two discussions with Blanca Pelowitz the first on December 31, 2008 and another in late January 2009.

In addition to the verbal statements made, written documents generated by employees of the Sheriff's Department document the fact that I was NOT going to be considered a "RESIDENT" of San Diego County

The First Amended Complaint challenges California Penal Code section 12050 facially and as applied by Defendant on grounds pursuant to the Second Amendment, the Equal Protection Clause, the Privileges and Immunities Clause, Procedural Due Process and the constitutional **right to travel**. The allegations are focused on the **"good cause"** and **"residency"** requirements of Penal Code section 12050.

This is correct and was based on the verbal statements and written records made or supplied to me during the application process.

(D) For the purpose of subparagraph (A), the applicant shall satisfy any one following:

- (i) Is **a resident of the county or a city within the county.**
- (ii) Spends a substantial period of time in the applicant's principal place of employment or business in the county or a city within the county.

This section of California Penal Code 12050 is accurate and documents the fact that applicants must only be a "RESIDENT" in the issuing jurisdiction, nothing more and nothing less.

This discretion must be exercised in each individual case. "It is the duty of the sheriff to make such an investigation and determination, on an individual basis, on every application under section 12050." *Salute v. Pitchess*, 61 Cal. App. 3d 557, 560-561 (1976).

The record will evidence that fact that the Sheriff's Department did NOT conduct an investigation into my residence status by contacting the supplied local character references, the neighbors or owners of 3151 Driscoll Drive in San Diego.

Investigators prepare notifications to other law enforcement agencies throughout the County or State for input, clear weapons through AFS (automated firearms systems), conduct a local criminal history check, DMV check, wait for fingerprint results and DOJ firearms eligibility, conduct residence verifications, verify character reference letters and verify documents. (Pelowitz Decl. ¶ 11.)

As stated previously, the San Diego Sheriff's Department did NOT conduct a residence verification or contact any of the local character references who submitted letters on my behalf.

All renewals must also comply with the 4-hour firearms course and must to go to the Sheriff's range for a qualify-shoot and firearm safety inspection. Renewals are issued absent any negative law enforcement contacts, crime cases, arrests and if there no changes from the initial application as to the reasons and if supporting documentation is provided. (Pelowitz Decl. ¶ 12.)

This requirement is mentioned only because of a reference to a document, (not supplied under discovery), obtained from a member of the San Diego Police Department and my attendance at the CLERB meeting in December of 2008.

There are no provisions in the Penal Code for an appeal process involving administrative action from the issuing agency. The Sheriff's Department in 1998-99 implemented the administrative/reconsideration process for CCW applicants. When taking administrative action to deny, suspend or revoke a CCW license, an upper command concurrence through the Law Enforcement Service Bureau is required before taking action. The individual is given the opportunity to request an appeal of the decision by writing to the Assistant Sheriff of the Law Enforcement Service Bureau. The appeal is heard by the Assistant Sheriff of the Bureau who will make the determination to overturn or uphold the decision. (Pelowitz Decl. ¶¶ 11-14.)

The documents generated as part of the "upper command" concurrence process document the facts currently being denied by the San Diego County and the San Diego Sheriff's Department.

"Good cause" under Penal Code section 12050 is defined by this County to be a set of circumstances that distinguish the applicant from other members of the general public and causes him or her to be placed in harm's way.

I believe that I provided more than enough information to document the circumstances that distinguish me from other members of the general public and cause me to be placed in harms way while residing in my motor home.

I have reason to believe that there are others in San Diego County that have obtained CCW permits under similar or less valid circumstances.

Residency under Penal Code section 12050 is generally defined by this County to include a person who maintains a permanent residence in the County, or spends more than six months of the taxable year within the County if the applicant claims dual residency. San Diego County uses the term "resident" as set forth in Penal Code section 12050(D), not "domicile." Part-time residents who spend less than six months in the County or otherwise fall within section 12050(D)(ii) are considered on a case-by-case basis and CCW licenses have been issued to part-time residents. (Pelowitz Decl. ¶ 8.)

Nowhere in California Penal Code Section 12050 is the word "PERMANENT" or a specific length of time mentioned or required to meet the requirements necessary to claim resident status for CCW purposes.

At no time, (after several documented attempts at obtaining a clarification), until reading the County's filing on October 4, 2010, have I been told that "part-time residents" were considered or would be considered on a "case by case" basis and eligible to receive CCWs in San Diego, County.

The fact that part time residents are in fact considered on a case by case basis along with the fact that CCWs have been issued is a total surprise.

I retained private legal counsel at considerable expense based on an appeal and litigation on the grounds that I was not considered a "RESIDENT" and that I did not provide an acceptable statement of "GOOD CAUSE".

Edward Peruta alleges that he was denied a license to carry a concealed weapon by the Sheriff's Department because he was not a resident of San Diego County and because he did not demonstrate good cause. In his declaration submitted in support of Plaintiffs' Motion for Partial Summary Judgment, he states that his need for a CCW license is not different from anyone else's need for a CCW license. (Peruta Decl. ¶ 6.) He states that he provided as good cause "the protection of myself and my wife from criminal attack, because we spend substantial amounts of time in our motor home, often in remote areas, and we often carry large sums of cash and valuables in the motor-home." He also states that his work "gathering breaking news and conducting legal investigations often requires me to enter dangerous locations." (Peruta Decl. ¶ 9.) He does not state that he provided any documentation supporting his "good cause" statement.

I stand by the allegation made in my declaration and now have reason to believe that my "RESIDENT" status and reasons outlining the circumstances for "GOOD CAUSE" are as valid and justified as others who have in fact been issued CCWs from the San Diego Sheriff's Department.

Peruta's CCW license application was denied solely because he provided no documentation supporting his statement of "good cause." Residency was not a factor in the denial. In addition, his alleged "business" is not licensed to do business in the State of California. (Plaintiffs' Exhibit G; Pelowitz Decl. ¶17.) Peruta made no effort to provide supporting documentation, the only document he provided was a photograph of a sign from a mobile home park. (Defendant's Exhibit 1.)

The preponderance of the evidence found in my application file and available for submission to the court, overwhelmingly documents the fact that my application was not going to be properly investigated, considered or approved from the moment it was unilaterally and improperly decided that I was not a "PERMANENT" resident of San Diego County.

My statement of “GOOD CAUSE” and submission of the Ventura County Sheriff’s Flyer meets or exceeds other statements and submissions for CCWs that were issued.

Leslie Buncher’s application was denied **because he is retired.**

One only has to look at the files of other individuals who are retired and have valid CCWs to understand the issues.

Penal Code section 12050 does not regulate the possession of a gun in the home for lawful purposes of confrontation or self-defense, as did the law declared unconstitutional in Heller. Rather, it involves the licensing of persons in the context of the regulation of the carrying of concealed weapons in places. Further, **carrying a firearm concealed on the person or in a vehicle is not in the nature of a common use of a gun for lawful purposes which the court declared to be protected by the Second Amendment in Heller.** Unlike possession of a gun for protection **within a residence,** carrying a concealed firearm presents a recognized “threat to public order,” and is “prohibited as a means of preventing physical harm to persons other than the offender.’ [Citation.]” People v. Hale, 43 Cal. App. 353, 356 (1974). **A person who carries a concealed firearm on his person or in a vehicle, “which permits him immediate access to the firearm but impedes others from detecting its presence, poses an imminent threat to public safety ...’** [Citation.]” People v. Hodges, 70 Cal. App. 4th 1348, 1357 (See also Declaration of Franklin Zimring.)

Since the Heller and McDonald decisions, the situation where individuals establish their “RESIDENCE” in a MOBILE “HOME” now begs the question of whether or not a permit is required to keep and bear firearms while operating in a manner where they are available for immediate access in case of confrontation. The unanswered question is: Does a mobile Recreational Vehicle whether stationary or in motion, constitute “HARTH AND HOME”.

Here, California law does not impede the ability of individuals to defend themselves with firearms in their **homes.**

Since the Heller and McDonald decisions, the situation where individuals establish their “RESIDENCE” in a MOBILE “HOME” now begs the question of whether or not a permit is required to keep and bear firearms while operating in a manner where they are available for immediate access in case of confrontation. The unanswered question is: Does a mobile Recreational Vehicle whether stationary or in motion, constitute “HARTH AND HOME”.

Regardless of the level of constitutional scrutiny, Plaintiffs’ as-applied challenge fails. The governmental interest furthered by Penal Code sections 12025, 12031 and 12050 as administered by Defendant -- **the safety of the public from unknown persons carrying concealed, loaded firearms -- is both important and compelling.** (Zimring Declaration.)

This statement by Zimring is compelling when real world aspects are added.

The safety of the general public from unknown persons who illegally carry concealed loaded firearms for unlawful violent purposes – is both important and compelling.

California’s regulation of public carry of concealed firearms embodies a strong and long-held legislative interest in protecting public safety and reducing crime, and the efforts of the Sheriff in

limiting concealed carry **to those persons with unique and specific needs** consist of reasonable regulation of firearms that have little impact on the “right to keep and bear arms” as so far articulated by the Supreme Court.

A periodic examination and review of “THOSE PERSONS WITH UNIQUE AND SPECIFIC NEEDS” who have successfully obtained CCW permits from the San Diego County Sheriff’s Department is the only way to positively determine whether or not “REASONABLE REGULATIONS” exist in issuing CCWs.

The governmental interest furthered by limiting the licensing of concealed carry of firearms is both important and compelling. (Zimring Declaration.) The relevant Penal Code provisions are **narrowly tailored** and substantially related to furthering public safety and reducing crime. **Concealed handguns are the priority of law enforcement everywhere because of the use of the concealed handgun in vast numbers of criminal offenses.** (Zimring Declaration.) **Concealed carry of handguns allows for stealth and surprise. Limiting the number of loaded and concealed firearms in public places helps to keep the balance in favor of law enforcement and avoids the necessity for every place that is open to the public – restaurants, malls, theaters, parks, etc.-- to be equipped with metal detectors, fencing and other forms of security, in order to protect patrons from the fear of widespread and unchecked concealed firearms.**

The relevant Penal Code is narrowly tailored to allow for the issuance to individuals while preventing a limited number of individuals from obtaining a CCW.

Concealed handguns are the priority of ALL LAW ABIDING AMERICANS and not just the priority of law enforcement. Because the violence associated with the use of concealed handguns by CRIMINALS is statistically more dangerous to unarmed law abiding members of the public than members of an armed law enforcement agency.

NOT Limiting the possession of concealed handguns by law abiding citizens helps to keep the balance in favor of law abiding individuals who are beyond the instant or delayed response of law enforcement.

Carrying concealed handguns by law abiding individuals should be the last reason to require the extensive security measures listed.

There is already “WIDESPREAD AND UNCHECKED CONCEALED FIREARMS” in the criminal elements of our communities.

In *Nordyke v. King*, 563 F.3d 439 (9th Cir. 2009)(now vacated for reconsideration), a Ninth Circuit panel rejected a Second Amendment *Heller* challenge to a county ordinance broader than the regulation at issue in this case. *Nordyke* upheld an ordinance banning all possession of weapons or ammunition on county property because county property includes many “gathering places where high numbers of people might congregate” and, like government building and schools, “possessing firearms in such places risks harm to **great numbers of defenseless people** (e.g., children).” *Id.* at 460, 459.

The fact that any government can claim to have “GREAT NUMBERS OF DEFENSELESS PEOPLE” only goes to prove that there should be a GREAT NUMBER OF PEOPLE WITH THE ABILITY TO DEFEND THEMSELVES AND OTHERS IF NECESSARY.

Significantly, the subject statutes are far more narrowly framed than the ordinance at issue in *Nordyke*, prohibiting only the carrying of concealed loaded firearms in public places outside the home

with numerous exceptions allowing for the keeping and bearing of arms under specific circumstances that fall within the right as defined by Heller. The Sheriff's practices in **limiting CCW licenses to those with specific and documented needs** is consistent with the compelling and significant legislative goals underlying sections 12025 and 12031, i.e. **the protection of the general public from widespread and unchecked public carry of concealed and loaded firearms.** There is a "compelling state interest in protecting the public from the hazards involved with certain types of weapons, such as guns." State v. Cole, 665 N.W.2d at 344.

Every law abiding individual should have the right to protect themselves from the widespread and unchecked criminals individuals and elements amongst us who often carry various concealed weapons in the commission of a crime.

Plaintiff's second claim asserts a violation of equal protection **by application of the "residency" and "good cause" requirements.** Under the Equal Protection Clause of the Fourteenth Amendment, no state shall "deny to any person within its jurisdiction the equal protection of the laws." The Equal Protection Clause "is essentially **a directive that all persons similarly situated should be treated alike.**" City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985). When a government's action does not involve a suspect classification or implicate **a fundamental right**, even intentional discrimination will survive constitutional scrutiny for an equal protection violation as long as it bears a rational relation to a legitimate state interest. New Orleans v. Dukes, 427 U.S. 297, 303-04 (1976); Cleburne, 473 U.S. at 439; Lockary v. Kayfetz, 917 F.2d 1150, 1155 (9th Cir. 1990).

I currently have reason to believe that the public record will show that others in San Diego County who are similarly situated have been provided the means and opportunity to obtain and possess a CCW. I only demand that the Federal Court review the facts and evidence and issue an order that all persons be treated alike.

Plaintiff argues three theories for an equal protection violation. First, Plaintiffs assert that Plaintiff Peruta was treated differently than **similarly situated residents of San Diego County because he resides in San Diego only part of the year.** (FAC ¶ 116.) Second, Plaintiff alleges that Sheriff Gore discriminates against **responsible, law-abiding citizens** who cannot provide evidence documenting a specific threat proving their "need" to exercise the right to bear Arms. (FAC ¶118; Pl. MSJ at 18-20.) Third, **Plaintiff contends that Sheriff Gore made an impermissible classification and gave preferential treatment to applicants who were "politically-connected, wealthy, contributors of the Sheriff's campaign," or members of the Honorary Deputy Sheriff's Association.** (FAC ¶ 117; Pl. MSJ at 20-22.) **All three** of Plaintiffs allegations fail to demonstrate a violation of the Equal Protection Clause.

The case I filed has placed these issues before a Federal Court and I will let the evidence and facts dictate what happens.

Peruta is the only Plaintiff who alleges he was denied equal protection of the law **because he is not considered a "resident"** under California Penal Code 12050 as applied by the Sheriff's Department. (FAC ¶ 117.) However, Plaintiff's **allegations are simply not true as his application was not denied on "residency" grounds;** therefore, he was not "treated differently" than similarly situated San Diego County **"residents."** (Pelowitz Decl. ¶ 17.)

To mislead the court and those that read the public record, by claiming that my facts are "SIMPLY NOT TRUE" is clearly one of the issues that my attorneys and the court have been asked to resolve.