

**Case Number 11-16255**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**ADAM RICHARDS, et al.,**

**Plaintiffs/Appellants**

**vs.**

**ED PRIETO, et al.,**

**Defendants/Appellees**

On Appeal From:

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
Case No. 2:09-CV-01235-MCE-DAD  
Honorable Morrison C. England

**APPELLEES' MOTION FOR RELIEF FROM STAY**

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ED PRIETO and COUNTY OF YOLO

## I. RELIEF REQUESTED

Petitioners/Appellees Sheriff Ed Prieto and County of Yolo request this Court terminate the stay on consideration of their petition for rehearing *en banc* (dkt. # 72) imposed by Order filed May 1, 2014 (dkt. # 87).

## II. THE GROUND FOR STAY HAS ENDED AND THIS MATTER IS RIPE FOR REVIEW

The Court suspended consideration of the petition “pending this Court’s resolution of pending post-opinion matters in *Peruta v. County of San Diego*, No 10-56971.” *Ibid.* By opinion filed November 12, 2014, the Court decided the State of California and others could not intervene for the purpose of seeking *en banc* review of the *Peruta* decision. After that decision, a judge made a *sua sponte* call for a vote on whether *Peruta* should be heard *en banc*, and briefing on that question was ordered. *Peruta* dkt., # 161. Meanwhile, the State of California filed a petition for rehearing *en banc* of the intervention question.

Allowing the petition in *Richards* to be considered concurrently with *sua sponte* consideration of *Peruta* would foster judicial economy. Because the constitutional questions presented by the two cases are identical, the panel's memorandum decision in *Richards* wholly based its reversal of the district court's judgment on the *Peruta* decision. Dkt. 70-1, p. 2; dkt. 70-2, p. 2 (concurring op. of J. Thomas). But, unlike *Peruta*, *Richards* has no pending intervention issue, rendering it a smoother procedural vehicle for consideration of the Second Amendment questions. The State of California filed an amicus brief in support of the petition in *Richards* (dkt. 80), as did the Law Center to Prevent Gun Violence (dkt. # 74), and the Brady Center to Prevent Gun Violence (dkt. # 77), so all parties attempting to intervene or participate as amici in *Peruta* are also present in *Richards*. The Plaintiffs in *Richards* have responded to the petition (dkt. # 85), so the matter is ready for decision. The State of California also stated in its recent *Peruta* filings, as well as informally to Sheriff Prieto's counsel, that it considers *Richards* equally adequate as *Peruta* for *en banc* presentation of the Second Amendment issues. Finally,

the *Richards* Plaintiffs/Appellees consent to lifting of the stay so that the petition can be now decided, though they do not consent to the petition's granting.

*Richards* and *Peruta* were argued together at the panel level (along with *Baker v. Kealoha*, # 12-16258), and essentially decided in tandem. No reason suggests the two cases should not continue to proceed concurrently regarding the Second Amendment issues. And, if the Court deems the pending intervention issue in *Peruta* problematic regarding *en banc* review of the shared Second Amendment issues, this Court can stay issuance of the mandate in *Peruta* pending the outcome of any *en banc* proceedings in *Richards*. Accordingly, the Court should terminate the stay and allow the petition for rehearing *en banc* to proceed concurrently with the *sua sponte* vote in *Peruta*.

Dated: December 15, 2014

ANGELO, KILDAY & KILDUFF

/s/ John A. Whitesides

By: \_\_\_\_\_  
JOHN A. WHITESIDES

9th Circuit Case Number(s)

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