

No. 12-56508 [DC# 2:11-cv-08026]

IN THE
UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

SIGITAS RAULINAITIS,

Plaintiffs-Appellants, v.

LOS ANGELES COUNTY SHERIFFS
DEPARTMENT, et. al.,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES
DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

**APPELLANT'S POST PERUTA BRIEF
BRIEF**

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**Plaintiffs-Appellants
Sigitas Raulinaitis**

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POST PERUTA MEMORANDUM

It is undisputed that the only lawful way for Plaintiff to exercise his fundamental right to self defense is with a permit issued by Defendant. Plaintiff does not dispute that the Peruta court found there was no specific right to concealed carry, but it specifically did not address whether the right existed outside the home, or if open carry must then be a viable alternative stating that the question was not presented. In Peruta the Court specified that it did "... not reach the question whether the Second Amendment protects some ability to carry firearms in public, such as open carry. That question was left open by the Supreme Court in *Heller*, and we have no need answer it here." 10-56971, 2016 WL 3194315 (9th Cir. June 9, 2016), at 19. Peruta was based upon a pre-open carry ban and the question presented was somehow limited to the sole issue of whether there was a Right to concealed carry, something not contended in this action.

Likewise, the Central District has subsequently stated that there is no right to open carry a firearm because Peruta secured the right to concealed carry firearms:

[T]he state has a right to prescribe a particular manner of carry, provided that it does not “cut[] off the exercise of the right of the citizen altogether to bear arms, or, under the color of prescribing the mode, render[] the right itself useless.” [Nunn v. State, 1 Ga. 243, 243 (1846)]. California’s favoring concealed carry over open carry does not offend the Constitution, so long as it allows one of the two.

Nichols v. Harris, Case No. CV 11-9916 SJO, from Referees Report dated 3/18/16 and adopted as final Judgment, at 21.

Thus, we are left with a conundrum, which one of the two is permitted and how does Plaintiff herein get this Court to recognize his Right to Bear Arms is being infringed? Peruta initially found a right to carry concealed, and then *en banc* the 9th Circuit found no specific right to concealed carry, but meanwhile, this District has found no right to open carry because Concealed Carry is an option, all the while having lost sight of the forest for the trees as the Supreme Court has repeatedly stated, as the Second Amendment reads, the People have a Right to Bear Arms for Self Defense.

Furthering the unanimous vote, Justices Alito and Thomas concurred in Caetano v. Massachusetts, 136 S. Ct. 1027, decided March 21, 2016, making it clear that 'it is settled that the Second Amendment protects an individual right to keep and bear arms applies against both the Federal Government and the States. District of Columbia v. Heller, 554 U. S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008); McDonald v. Chicago, 561 U. S. 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010). That right vindicates the “basic right” of “individual self-defense.” *Id.*, at 767, 130 S. Ct. 3020, 177 L. Ed. 2d 894; see Heller, supra, at 599, 628, 128 S. Ct. 2783, 171 L. Ed. 2d 637. Caetano’s encounter with her violent ex-boyfriend illustrates the connection between those fundamental rights: By arming herself, Caetano was able to protect against a physical threat that restraining orders had proved useless to prevent. And, commendably, she did so by using a weapon that posed little, if any, danger of permanently harming either herself or the father of her children.’ Caetano v. Massachusetts, 136 S. Ct. 1027 decided March 21, 2016 at 1028-1029.

Moreover, this isn't new, because as set forth in the Motion for Summary Judgment, the Supreme Court has indeed long recognized both the right to possess arms and the right to self defense:

“Putting all of these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation.” District of Columbia v. Heller, 128 S. Ct. 2783, at 2798 (2008).

Again reiterating just two years later:

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

Thus, the very basic question presented here is whether this Court recognizes that Plaintiff has a fundamental Right to Bear Arms outside the home, and if so, in what manner should plaintiff be allowed to exercise that right as it is the State that has chosen the Sheriff as it means for both enforcing the ban on open carry and given the ministerial power to issue the license needed to exercise that Right.

Put quite simply, Plaintiff asks this Court to remedy the violation of their Right to Bear Arms by a Sheriff who has created his own interpretation of the law thus creating a complete ban on the Right to Bear Arms by imposing discretionary

conditions well in excess of any valid legal basis insisting that he has plenary and unfettered discretion to decide who gets their right and who doesn't.

Moreover, plaintiff does not dispute the necessity for a criminal background check matching that necessary to purchase a gun, nor the training requirements.

The only infringing conduct here is the breach of a ministerial duty by an elected official to issue a license necessary to exercise the fundamental right in question when that same ministerial agent is in charge of enforcing laws banning the possession of a weapon for self defense in the absence of such license.

Plaintiff would respectfully submit that the debate between open and concealed carry is one best left for the politicians, and that the focus in this case remain simply the redress sought by Plaintiff, to wit, the ability to exercise his Right to Bear Arms outside the home for the purpose of Self Defense in a lawful manner.

Date: August 31, 2016

s/ Jonathan Birdt
Jonathan W. Birdt (SBN# 183908)
Plaintiff-Appellant