

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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**Case No. 12-56236**

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ROBERT THOMSON,

Plaintiff-Appellant,

v.

TORRANCE POLICE DEPARTMENT and THE LOS ANGELES COUNTY  
SHERIFF'S DEPARTMENT,

Defendants-Appellees.

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On Appeal from the United States District Court for the Central District of  
California, the Honorable S. James Otero, Judge  
Case No. CV 11-06154 SJO (JCx)

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**SUPPLEMENTAL (POST-*PERUTA*) BRIEF OF APPELLEE  
THE LOS ANGELES COUNTY SHERIFF'S DEPARTMENT**

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## INTRODUCTION

In accordance with this Court's Order entered August 23, 2016, Defendant-Appellee the Los Angeles County Sheriff's Department ("LASD") submits this Supplemental Brief in light of this Court's en banc decision in *Peruta v. County of San Diego*, No. 10-56971, and *Richards v. Prieto*, No. 11-16255, 824 F.3d 919 (9<sup>th</sup> Cir. 2016) ("*Peruta*"). *Peruta* clearly held that the Second Amendment of the United States Constitution does not convey an absolute right to carry concealed weapons in public places. Because there is no Constitutional right to carry concealed weapons in public, the *Peruta* court held that the requirement that an applicant show good cause to obtain a concealed weapons permit, irrespective of how good cause is defined, does not violate the Second Amendment.

Appellant Robert Thomson sued LASD and co-Defendant/co-Appellee Torrance Police Department ("Torrance") under 42 U.S.C. §1983 claiming that their denial of his concealed weapons (CCW) permit application violated his Second Amendment right to bear arms. The district court granted both the LASD and Torrance motions for summary judgment, finding the LASD and Torrance CCW policies and the denial of Appellant's CCW application to be constitutional. (ER, pp. 1-13). Appellant now appeals this decision to this Court. Thus Appellant's only claim – a constitutional challenge to LASD's denial of his CCW

application – is foreclosed by *Peruta* and was correctly rejected by the district court.

The California Legislature has given the Sheriff the discretion to issue CCW permits to qualified individuals who can show "good cause." Similar to many other jurisdictions in California, including San Diego County (the defendant-appellee in *Peruta*), the LASD defines "good cause" as requiring convincing evidence of a clear and present danger to the applicant or his/her family that cannot be adequately dealt with by law enforcement.

In light of the *Peruta* decision, the LASD's requirement that a concealed weapons permit applicant show good cause does not violate the Second Amendment. As such, this Court should affirm the trial court's ruling.

## ARGUMENT

### I. **The *Peruta* Court Unequivocally Held that a Local Law Enforcement Agency's Requirement that a Concealed Weapons Permit Applicant Demonstrate Good Cause Does Not Violate the Second Amendment.**

The facts of *Peruta* are nearly identical to this case. Plaintiff Edward Peruta, a resident of San Diego County, and Plaintiff Adam Richards, a resident of Yolo County, each applied for a license to carry a concealed firearm. Both applications were denied because Plaintiffs had not shown good cause as required under their respective county's policy. 824 F.3d at 924. Like LASD, both San Diego and Yolo County policies define "good cause" as requiring a particularized reason why

an applicant needs a concealed firearm for self-defense. *Id.*, see also 1 SER p. 6:¶8; p. 19¶6. And similarly, Appellant's CCW application was denied because he failed to show good cause as defined by LASD policy.

After reviewing the history relevant to the Second Amendment and its incorporation by the Fourteenth Amendment, the *Peruta* en banc court held: "We therefore conclude that the Second Amendment right to keep and bear arms does not include, in any degree, the right of a member of the general public to carry concealed firearms in public. In so holding, we join several of our sister circuits that have upheld the authority of states to prohibit entirely or to limit substantially the carrying of concealed or concealable firearms." *Peruta*, 824 F.3d at 939 (citing cases). Further, "[b]ecause the Second Amendment does not protect in any degree the right to carry concealed firearms in public, any prohibition or restriction a state may choose to impose on concealed carry – including a requirement of "good cause," however defined – is necessarily allowed by the Amendment." *Id.*

This holding "fully answered" the questions presented to the *Peruta* court, which are identical to those presented in this case. The Second Amendment does *not* convey an absolute right to carry concealed weapons in public places. As such, a county's requirement that a CCW permit applicant show good cause for the issuance of that permit does *not* violate the Second Amendment. As in *Peruta*, Appellant's challenge is only to the policies governing concealed carry and the

denial of his CCW application. Accordingly, *Peruta* is binding authority in this appeal and the district court decision should be affirmed.

**II. Despite Appellants' Claims to the Contrary, the Issue of Open Carry is Not Before this Court.**

Because *Peruta* clearly held that there is no Second Amendment right to carry a concealed weapon in public, Appellant has apparently attempted to re-frame the scope of his appeal in his "Post Peruta Brief" by contending that this case is also about an individual's Constitutional right to open carry. Appellant's appeal, however, is from the trial court's decision upholding LASD's denial of his CCW application. As such, contrary to Appellant's eleventh-hour representations, the question of open carry is not and has never been an issue in this appeal.<sup>1</sup>

Further, Appellant's argument that *Peruta* has somehow foreclosed the constitutional right to bear arms for self-defense was squarely addressed and rejected by the en banc majority. Appellant's argument appears to be lifted from the principal dissent in *Peruta*, which concluded that when California's restrictions on open and concealed carry are considered together (as California prohibits open carry), they are unconstitutional as they "are tantamount to complete bans on the

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<sup>1</sup> Appellant's discussion of *Caetano v. Massachusetts*, 136 S.Ct. 1027 (Mar. 21, 2016) is also irrelevant to this appeal. The Supreme Court merely held in *Caetono* that stun guns are not protected by the Second Amendment. Indeed, Appellant only cites *Caetano* for its concurrence, which is not only non-binding on this Court, but limited only to the notion of self-defense in general. *Id.*

Second Amendment right to bear arms outside the home for self-defense." Thus, Appellant contends that the restrictions on concealed carry violate the Second Amendment. *Peruta*, 824 F.3d at 941. As the majority points out, however, that argument is based on a "logical fallacy." "Even construing the Second Amendment as protecting the right of a member of the general public to carry a firearm in public (an issue we do not decide), and even assuming that California's restrictions on public open carry violate the Second Amendment so construed (an issue we also do not decide), it does not follow that California's restrictions on public concealed carry violate the Amendment." *Id.* at 941-42. Accordingly, Appellant cannot invoke the Second Amendment to protect a right to carry a concealed weapon, as that right "does not exist under the Amendment." *Id.* at 942.

### **CONCLUSION**

For the foregoing reasons, and the reasons set forth in its prior briefing, the LASD asks that the Court affirm the trial court's ruling.



DATED: September 13, 2016

Respectfully submitted,

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## STATEMENT OF RELATED CASES

There are two related cases in the Ninth Circuit arising out of the LASD's denial of concealed weapons permits, and who are also represented by Jonathan Birdt.

1) *Jonathan Birdt v. Los Angeles County Sheriff's Department*, Ninth Circuit Case No. 12-55115 (United States District Court Case No. CV 10-08377 JAK).

2) *Sigitas Raulinaitis and Rima Raulinaitis v. Los Angeles County Sheriff's Department, et al.*, Ninth Circuit Case No. 12-56508 (United States District Court Case No. CV 11-08026 MWF (JCGx))

In both of these related cases, the trial courts granted summary judgment to the LASD finding the good cause policy at issue here to be constitutional.

DATED: September 13, 2016

Respectfully submitted,

MARY C. WICKHAM  
County Counsel

By /S/ LANA CHOI  
LANA CHOI  
Senior Associate County Counsel

Attorneys for Defendant-Appellee  
THE LOS ANGELES COUNTY SHERIFF'S  
DEPARTMENT ("LASD")

## CERTIFICATE OF COMPLIANCE

I, Lana Choi, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a Senior Associate County Counsel in the office of the Los Angeles County Counsel, attorneys of record for the Defendant and Appellee Los Angeles County Sheriff's Department.

2. Pursuant to Circuit Rule 32-1, I certify that the Appellee's Supplemental Post-*Peruta* Brief conforms with Fed. R. App. P. 32(a)(7)(B)(i), is proportionately spaced, has a typeface of 14 points or more and contains less than 14,000 words, including footnotes. According to the Word program used to produce this brief, the word count is 1,105.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on September 13, 2016, at Los Angeles, California.

/S/LANA CHOI  
\_\_\_\_\_  
LANA CHOI  
Senior Associate County Counsel

**CERTIFICATE OF SERVICE**

9<sup>th</sup> Circuit Case No. 12-56236

I hereby certify that I electronically filed the foregoing

**SUPPLEMENTAL POST-PERUTA BRIEF OF APPELLEE THE LOS ANGELES COUNTY SHERIFF'S DEPARTMENT**

with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on September 13, 2016.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature: /s/ Lana Choi