Ninth Circuit Invalidates Sheriff's Good Cause Requirement For Concealed Weapons License

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ATTORNEYS

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The San Diego County Sheriff's "good cause" requirement for a "concealed-carry" weapons (CCW) license has been struck down by the Ninth Circuit Court of Appeals on the ground that it violates the Second Amendment.

In *Peruta, et al. v. County of San Diego*, et al., Case No. 10-56971, the Court considered a challenge to the Sheriff's policy for issuing a CCW license. The California Penal Code requires, among other things, that "good cause" be shown for issuance of the license. In San Diego County, a showing of "good cause" requires "supporting documentation" such as a restraining order, to demonstrate a "unique risk of harm: â€¦a set of circumstances that distinguish the applicant from the mainstream and causes him or her to be placed in harm's way."

The County contended the policy is a reasonable regulation, consistent with decisional law and necessary to protect the public from the risks posed by concealed handguns. The Plaintiffs argued that the Second Amendment required the County to issue CCW licenses to use handguns for self-defense outside of the home without having to provide "supporting documentation" showing that the risk of harm to them was greater than the general risk of harm faced by others outside of the home.

The Court, in a split 2 to 1 decision, concluded that a law-abiding citizen who carries an operable handgun for self-defense outside of the home is "bear[ing] Arms" within the meaning of the Second Amendment. The Court stated that it was not holding that the Second Amendment requires the government to permit a law abiding citizen to carry a concealed handgun in public. Instead, the Court found where a State, such as California, has banned the open carrying of a loaded firearm in public, and the only remaining option for carrying a handgun in public for self defense is to carry a concealed handgun, the government may not require an individualized showing of harm before issuing a CCW license. Accordingly, the Court concluded that the County impermissibly infringed the Second Amendment by denying a CCW license on the basis that applicants failed to show they faced a greater risk of harm in public than that faced by the

population in general.

The Peruta decision is broad and sweeping. So long as California continues to ban the open carrying of loaded firearms in public, law-abiding citizens who seek a permit to carry a concealed handgun for self-defense in public need not show that they face a risk of harm that is any different from the general risk of harm everyone faces when they leave their homes. It is unknown whether the decision may be limited, expanded, or overruled by further judicial action. Police agencies acting on CCW applications should heed the decision, and should monitor whether a larger panel of the Ninth Circuit agrees to rehear the case or, alternatively, whether review is sought in the United States Supreme Court.

The County of San Diego has announced it will not seek further review of the decision. Nevertheless, the State of California is considering whether to request a rehearing en banc. Any judge of the Ninth Circuit also may call for a vote on whether the case should be reheard en banc.

For advice in drafting or revising CCW license policies, please contact D. Craig Fox at dcfox@rwglaw.com or any of the members of the Firm's Police Practices Group.