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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES
BY: 

FILED

8 United States District Court
9 Central District of California

11 Charles Nichols,
12 PLAINTIFF,
13 vs.
14 KAMALA D. HARRIS, Attorney
15 General, in her official capacity as
16 Attorney General of California, CITY
17 OF REDONDO BEACH and DOES 1
18 to 10,
19 Defendants.

) Case No.:
) CV-11-9916 SJO (SS)

) **SECOND AMENDED COMPLAINT**
) **COMPLAINT FOR**
) **DECLARATORY AND/OR**
) **PROSPECTIVE INJUNCTIVE**
) **RELIEF**
) **COMPLAINT FOR DAMAGES**
) **DEMAND FOR JURY TRIAL**
) 42 U.S.C. §§ 1983, 1985, 1986, 1988
) FIRST AMENDMENT
) SECOND AMENDMENT
) FOURTH AMENDMENT
) FOURTEENTH AMENDMENT

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JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, 2201, 2202 and 42 U.S.C. §§ 1983, 1985, 1986, 1988.

2. Venue lies in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

3. PLAINTIFF CHARLES NICHOLS is a natural person and citizen of the United States and of the State of California and was at all material times a resident of Los Angeles County.

4. At all relevant times, DEFENDANT KAMALA HARRIS (KAMALA HARRIS, HARRIS) was, and currently is, the Attorney General of the State of California and she is obligated to supervise her agency and comply with all statutory duties under California Law. She is charged with enforcing and interpreting California Statutes including, but not limited to, California Penal Code Sections 25850, 26350, 26400, 26150, 26155, 26165, 26175, 26180, 26185, 26190, 26200, 26202, 26205, 26210, and 26215. KAMALA HARRIS has concurrent prosecutorial jurisdiction with the state's 58 District Attorneys, and she is bound by a duty to seek substantial justice and avoid the filing of criminal charges in which she knows (or should know) are not supported by probable cause. HARRIS also has an independent duty to disclose information beneficial to the accused and by extension she has a duty to prevent wrongful arrests in the first place when she has the power to do so. When she deems it advisable or necessary in the public interest, or when directed to do so by the Governor, she shall assist any district attorney in the discharge of his duties, and may, where she deems it necessary, take full charge of any investigation or prosecution of violations of law of which the superior court has jurisdiction. In this respect she has all the powers of a district

1 attorney, including the power to issue or cause to be issued subpoenas or other
2 process. See Article 5, Section 13 of the California Constitution and Cal. Gov't
3 Code §§ 12510, 12511 & 12550. She is being sued solely in her official capacity
4 and solely for Declarative and/or prospective injunctive relief.

5
6 5. At all relevant times, DEFENDANT CITY OF REDONDO BEACH
7 (“CITY”) is and was a duly organized public entity, form unknown, existing under
8 the laws of the State of California. At all relevant times, CITY was the employer
9 of the police officers, prosecutors and DOE defendants who injured PLAINTIFF.

10
11 6. PLAINTIFF is uncertain of the exact identity of any additional individual
12 defendants who participated in the violation of his constitutionally protected rights.
13 PLAINTIFF therefore names these individuals as DOE Defendants and reserves
14 the right to amend this complaint when their true names are ascertained.
15 Furthermore, if/when additional persons and entities are discovered to have
16 assisted and/or lent support to the wrongful conduct of the DEFENDANTS named
17 herein, PLAINTIFF reserves the right to amend this complaint to add those persons
18 and/or entities as Defendants.

19
20 **BACKGROUND ALLEGATIONS**

21 7. The United States Supreme Court in its landmark decision on the Second
22 Amendment, *District of Columbia v. Heller*, 128 S. Ct. 2783, 2809 (2008),
23 broadly confirmed the rights of Americans to keep and bear arms. While the
24 opinion recognizes some limits to this right (i.e., prohibitions on concealed
25 weapons in public, prohibitions on dangerous and unusual weapons, limitations on
26 the possession of firearms by felons and the mentally ill, and laws forbidding
27 carrying firearms in sensitive locations like schools and public buildings), the right
28 itself is broad and occupies an important place in our constitutional history. The

1 right to keep and bear arms is implicit in our understanding of ordered liberty and
2 is deeply rooted in the traditions of our country. The Second Amendment right is
3 not the only provision in the Bill of Rights that has controversial public safety
4 implications. The provisions of the Bill of Rights have governed law enforcement
5 practices, the prosecution of cases including criminal cases and the punishment of
6 offenders. All of these have disputed public safety implications. Despite this, self-
7 defense is the central component of the Second Amendment right and is enshrined
8 in Article I, Section 1 our own State Constitution. The core lawful purpose of self-
9 defense does not disappear the moment a private citizen steps outside his home.
10 *Heller* has provided for a number of presumptively lawful regulatory measures
11 noted above such as prohibitions on the carrying of concealed firearms in public,
12 but neither the state nor local governments can prohibit private citizens from
13 carrying firearms openly, except in sensitive places. *Heller* tells us “This [Open
14 Carry] is the right guaranteed by the Constitution of the United States...”
15

16 8. This case involves an important constitutional principle, that neither the state
17 nor local governments may prohibit PLAINTIFF or similarly situated individuals
18 from openly carrying a fully functional firearm (loaded and unloaded) for the
19 purpose of self-defense (or for other lawful purposes) in non-sensitive public
20 places such as public streets, sidewalks, parking lots, open public spaces, his
21 residential property, within his motor vehicle including any attached camper or
22 trailer regardless of whether or not the motor vehicle or attached camper or trailer
23 is used as a primary or temporary residence or no residence at all. Places which
24 are not sensitive places where the carrying of loaded firearms can be prohibited;
25 such as in schools and government buildings and where there exists a State or
26 Federal law which constitutionally prohibits the carrying of a loaded firearm in
27 those sensitive places are not at issue. PLAINTIFF similarly does not challenge
28 any state or Federal prohibition on the carrying of weapons concealed or in the

1 licensing of the carrying of a weapon concealed in a public place or any of the
2 other presumptively lawful prohibitions stated in the *Heller* decision.

3
4 9. California law has expanded its ban on carrying a firearm in public to such a
5 great extent that PLAINTIFF, and tens of millions of similarly situated persons in
6 California, violate the ban by merely stepping outside the door of his home onto
7 his own residential property. In particular, California courts have construed the
8 ban on carrying firearms in a public place to include private residential property.
9 California courts have also construed that a loaded handgun, inside of a chest of
10 drawers, inside of a trailer towed behind a motor vehicle is a public place even
11 though the trailer was being used as a primary residence by the defendant. The
12 California legislature has enacted two recent bans on the open carry of unloaded
13 firearms in public. Assembly Bill 144 made it a crime to openly carry an unloaded
14 handgun in a public place and Assembly Bill 1527 made it a crime to openly carry
15 an unloaded firearm in a public place which is not a handgun (e.g., rifle shotgun) in
16 an incorporated city or city and county. Neither bill provides for a self-defense
17 exception. Both bills prohibit transport of an unloaded firearm except for directly
18 between two places where it is legal to possess a firearm. Prior to the enactment of
19 these two bills it was possible to openly carry an unloaded firearm in public places
20 with ammunition at the ready and to load the firearm should one find himself in
21 “grave, immediate danger,” with an exception within 1,000 feet of a K-12 public or
22 private school, where handguns had to be carried unloaded in a fully enclosed,
23 locked container unless one had permission from the school (see Penal Code
24 section 626.9). This prohibition did not apply to the Open Carry of unloaded long
25 guns. However, the California courts are split on what constitutes a “loaded”
26 firearm. One appellate court held (correctly) that a firearm is not loaded unless
27 there is a live round in the firing chamber while another held that an unloaded
28

1 firearm is "loaded" if it simply has a magazine or clip containing ammunition
2 attached to the firearm and there is no ammunition in the firing chamber.

3
4 10. The theoretical ability to secure a license to openly carry a loaded firearm is
5 meaningless in light of Penal Code sections 26150 and 26155 which prevent
6 anyone living in a county with 200,000 or more people from securing a license to
7 openly carry a loaded gun. Virtually everyone in the state of California lives in a
8 place where state law prohibits the issuance of a license to openly carry a loaded
9 firearm (i.e., anyone who lives in a county with 200,000 people or more people)
10 including PLAINTIFF who lives in the County of Los Angeles.

11
12 11. Aside from the population limitation, an individual seeking a license to carry
13 a loaded and exposed weapon or a concealed weapon is required to apply for a
14 license from either the head of a municipal police department or county sheriff.
15 PLAINTIFF'S city of residence does not have a police chief and the custom and
16 policy of the Sheriff of Los Angeles County is to not issue permits absent showing
17 of an extraordinary need which as a practical matter means almost no one can carry
18 a loaded gun in Los Angeles County.

19
20 12. Indeed DEFENDANT HARRIS has instructed all issuing authorities in
21 California not to issue a license to openly carry a handgun to PLAINTIFF and
22 similarly situated individuals on page 1 of her "STANDARD APPLICATION
23 FOR LICENSE TO CARRY A CONCEALED WEAPON (CCW)" prepared by
24 the Attorney General pursuant to California Penal Code section 26175 which also
25 provides for her to revise the application form. DEFENDANT HARRIS has
26 refused to either create or revise the application form to accommodate
27 PLAINTIFF'S and similarly situated individuals Second Amendment right to
28 openly carry a loaded firearm in public for the purpose of self-defense and other

1 lawful purposes. Given the above, the constitutional right to bear arms as
2 enshrined in the Second Amendment and as recently interpreted by the Supreme
3 Court is being violated on a daily basis in California.

4
5 13. This case involves a second important constitutional principle that neither
6 the state nor its local governments can deny a license to PLAINTIFF or similarly
7 situated persons to openly carry a loaded firearm in non-sensitive public places
8 based on the population of the county in which a person who is not prohibited from
9 possessing a firearm resides or because he resides in a city or county within the
10 state in which state law does not provide for the issuance of a license to openly
11 carry a loaded firearm in non-sensitive public places.

12
13 **STATE LAWS AND CITY ORDINANCES**

14 14. All of the above paragraphs are re-alleged and incorporated herein by
15 reference with the same force and effect as if fully set forth herein.

16
17 15. Section 25850 states in pertinent part:

18 25850. (a) A person is guilty of carrying a loaded firearm when the person
19 carries a loaded firearm on the person or in a vehicle while in any public place or
20 on any public street in an incorporated city or in any public place or on any public
21 street in a prohibited area of unincorporated territory.

22 (b) In order to determine whether or not a firearm is loaded for the purpose of
23 enforcing this section, peace officers are authorized to examine any firearm carried
24 by anyone on the person or in a vehicle while in any public place or on any public
25 street in an incorporated city or prohibited area of an unincorporated territory.

26 Refusal to allow a peace officer to inspect a firearm pursuant to this section
27 constitutes probable cause for arrest for violation of this section. (Note that
28

1 California Penal Code **section 25850** does not contain a self-defense exception as
2 did prior section 12031.)

3
4 16. California Penal Code **section 26350** states in pertinent part:

5 26350. (a) (1) A person is guilty of openly carrying an unloaded handgun
6 when that person carries upon his or her person an exposed and unloaded handgun
7 outside a vehicle while in or on any of the following:

8 (A) A public place or public street in an incorporated city or city and county.

9 (B) A public street in a prohibited area of an unincorporated area of a county or
10 city and county.

11 (C) A public place in a prohibited area of a county or city and county.

12 (2) A person is guilty of openly carrying an unloaded handgun when that person
13 carries an exposed and unloaded handgun inside or on a vehicle, whether or not on
14 his or her person, while in or on any of the following:

15 (A) A public place or public street in an incorporated city or city and county.

16 (B) A public street in a prohibited area of an unincorporated area of a county or
17 city and county.

18 (C) A public place in a prohibited area of a county or city and county.

19
20 17. California Penal Code **section 26400** states in pertinent part:

21 26400. (a) A person is guilty of carrying an unloaded firearm that is not a
22 handgun in an incorporated city or city and county when that person carries upon
23 his or her person an unloaded firearm that is not a handgun outside a vehicle while
24 in the incorporated city or city and county.

25
26 18. California Penal Code **section 26150** states in pertinent part:
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1 26150. (a) When a person applies for a license to carry a pistol, revolver, or
2 other firearm capable of being concealed upon the person, the sheriff of a county
3 may issue a license to that person upon proof of all of the following:

4 (1) The applicant is of good moral character.

5 (2) Good cause exists for issuance of the license.

6 (3) The applicant is a resident of the county or a city within the
7 county, or the applicant's principal place of employment or business is in the
8 county or a city within the county and the applicant spends a substantial period of
9 time in that place of employment or business.

10 (4) The applicant has completed a course of training as described in Section
11 26165.

12 (b) The sheriff may issue a license under subdivision (a) in either of the
13 following formats:

14 (1) A license to carry concealed a pistol, revolver, or other firearm capable of
15 being concealed upon the person.

16 (2) Where the population of the county is less than 200,000 persons according to
17 the most recent federal decennial census, a license to carry loaded and exposed in
18 only that county a pistol, revolver, or other firearm capable of being concealed
19 upon the person.

20
21 19. California Penal Code **section 26155** is substantially identical to section
22 26150 except that “the chief or other head of a municipal police department
23 of any city or city and county” is substituted for “the sheriff of a county”
24 and:

25 (c) Nothing in this chapter shall preclude the chief or other head of a municipal
26 police department of any city from entering an agreement with the sheriff of the
27 county in which the city is located for the sheriff to process all applications for
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1 licenses, renewals of licenses, and amendments to licenses, pursuant to this
2 chapter.

3
4 20. California Penal Code **section 26160** states in pertinent part:

5 26160. Each licensing authority shall publish and make available a written
6 policy summarizing the provisions of Section 26150 and subdivisions (a) and (b)
7 of Section 26155.

8
9 21. California Penal Code **section 26165** requires a course of training of up to
10 24 hours before a license may be issued.

11
12 22. California Penal Code **section 26175** states in pertinent part:

13 26175. (a) (1) Applications for licenses, applications for amendments to
14 licenses, amendments to licenses, and licenses under this article shall be uniform
15 throughout the state, upon forms to be prescribed by the Attorney General.

16 (2) The Attorney General shall convene a committee composed of one
17 representative of the California State Sheriffs' Association, one representative of
18 the California Police Chiefs Association, and one representative of the Department
19 of Justice to review, and as deemed appropriate, revise the standard application
20 form for licenses. The committee shall meet for this purpose if two of the
21 committee's members deem that necessary.

22 (c) The standard application form for licenses described in subdivision (a) shall
23 require information from the applicant, including, but not limited to, the name,
24 occupation, residence, and business address of the applicant, the applicant's age,
25 height, weight, color of eyes and hair, and reason for desiring a license to carry the
26 weapon.

27 (i) Any license issued upon the application shall set forth the licensee's name,
28 occupation, residence and business address, the licensee's age, height, weight, color

1 of eyes and hair, and the reason for desiring a license to carry the weapon, and
2 shall, in addition, contain a description of the weapon or weapons authorized to be
3 carried, giving the name of the manufacturer, the serial number, and the caliber.
4

5 23. California Penal Code **section 26180** states in pertinent part:

6 26180. (a) Any person who files an application required by Section 26175
7 knowing that any statement contained therein is false is guilty of a misdemeanor.
8

9 24. California Penal Code **section 26185** states in pertinent part:

10 26185. (a) (1) The fingerprints of each applicant shall be taken and two
11 copies on forms prescribed by the Department of Justice shall be forwarded to the
12 department.

13 (2) Upon receipt of the fingerprints and the fee as prescribed in Section 26190,
14 the department shall promptly furnish the forwarding licensing authority a report of
15 all data and information pertaining to any applicant of which there is a record in its
16 office, including information as to whether the person is prohibited by state or
17 federal law from possessing, receiving, owning, or purchasing a firearm.

18 (3) No license shall be issued by any licensing authority until after receipt of the
19 report from the department.

20 (b) Notwithstanding subdivision (a), if the license applicant has previously
21 applied to the same licensing authority for a license to carry firearms pursuant to
22 this article and the applicant's fingerprints and fee have been previously forwarded
23 to the Department of Justice, as provided by this section, the licensing authority
24 shall note the previous identification numbers and other data that would provide
25 positive identification in the files of the Department of Justice on the copy of any
26 subsequent license submitted to the department in conformance with Section
27 26225 and no additional application form or fingerprints shall be required.
28

1 (c) If the license applicant has a license issued pursuant to this article and the
2 applicant's fingerprints have been previously forwarded to the Department of
3 Justice, as provided in this section, the licensing authority shall note the previous
4 identification numbers and other data that would provide positive identification in
5 the files of the Department of Justice on the copy of any subsequent license
6 submitted to the department in conformance with Section 26225 and no additional
7 fingerprints shall be required.

8
9 25. California Penal Code **section 26190** requires fees and provides for
10 additional testing costing applicant up to \$150 in addition to the required fees.

11
12 26. California Penal Code **section 26200** states in pertinent part:

13 26200. (a) A license issued pursuant to this article may include any
14 reasonable restrictions or conditions that the issuing authority deems warranted,
15 including restrictions as to the time, place, manner, and circumstances under which
16 the licensee may carry a pistol, revolver, or other firearm capable of being
17 concealed upon the person.

18
19 27. California Penal Code **section 26202** states in pertinent part:

20 26202. Upon making the determination of good cause pursuant to Section
21 26150 or 26155, the licensing authority shall give written notice to the applicant of
22 the licensing authority's determination. If the licensing authority determines that
23 good cause exists, the notice shall inform the applicants to proceed with the
24 training requirements specified in Section 26165. If the licensing authority
25 determines that good cause does not exist, the notice shall inform the applicant that
26 the request for a license has been denied and shall state the reason from the
27 department's published policy, described in Section 26160, as to why the
28 determination was made.

1 28. California Penal Code **section 26205** states in pertinent part:

2 26205. The licensing authority shall give written notice to the applicant
3 indicating if the license under this article is approved or denied. The licensing
4 authority shall give this notice within 90 days of the initial application for a new
5 license or a license renewal, or 30 days after receipt of the applicant's criminal
6 background check from the Department of Justice, whichever is later. If the license
7 is denied, the notice shall state which requirement was not satisfied.

8
9 29. California Penal Code **section 26210** states in pertinent part:

10 (d) Notwithstanding subdivision (c), if a licensee's place of residence was the
11 basis for issuance of a license, any license issued pursuant to Section 26150 or
12 26155 shall expire 90 days after the licensee moves from the county of issuance.

13 (e) If the license is one to carry loaded and exposed a pistol, revolver, or other
14 firearm capable of being concealed upon the person, the license shall be revoked
15 immediately upon a change of the licensee's place of residence to another county.

16
17 30. California Penal Code **section 26215** states in pertinent part:

18 26215. (a) A person issued a license pursuant to this article may apply to the
19 licensing authority for an amendment to the license to do one or more of the
20 following:

21 (1) Add or delete authority to carry a particular pistol, revolver, or other firearm
22 capable of being concealed upon the person.

23 (2) Authorize the licensee to carry concealed a pistol, revolver, or other firearm
24 capable of being concealed upon the person.

25 (3) If the population of the county is less than 200,000 persons according to the
26 most recent federal decennial census, authorize the licensee to carry loaded and
27 exposed in only that county a pistol, revolver, or other firearm capable of being
28 concealed upon the person.

1 (4) Change any restrictions or conditions on the license, including restrictions as
2 to the time, place, manner, and circumstances under which the person may carry a
3 pistol, revolver, or other firearm capable of being concealed upon the person.
4

5 31. California Penal Code **section 26220** states in pertinent part:

6 26220. (a) Except as otherwise provided in this section and in subdivision
7 (c) of Section 26210, a license issued pursuant to Section 26150 or 26155 is valid
8 for any period of time not to exceed two years from the date of the license.

9 (b) If the licensee's place of employment or business was the basis for issuance of
10 a license pursuant to Section 26150, the license is valid for any period of time not
11 to exceed 90 days from the date of the license. The license shall be valid only in
12 the county in which the license was originally issued. The licensee shall give a
13 copy of this license to the licensing authority of the city, county, or city and county
14 in which the licensee resides. The licensing authority that originally issued the
15 license shall inform the licensee verbally and in writing in at least 16-point type of
16 this obligation to give a copy of the license to the licensing authority of the city,
17 county, or city and county of residence. Any application to renew or extend the
18 validity of, or reissue, the license may be granted only upon the concurrence of the
19 licensing authority that originally issued the license and the licensing authority of
20 the city, county, or city and county in which the licensee resides.

21 (c) A license issued pursuant to Section 26150 or 26155 is valid for any period of
22 time not to exceed three years from the date of the license if the license is issued to
23 any of the following individuals:

24 (1) A judge of a California court of record.

25 (2) A full-time court commissioner of a California court of record.

26 (3) A judge of a federal court.

27 (4) A magistrate of a federal court.

28 (d) A license issued pursuant to Section 26150 or 26155 is valid

1 for any period of time not to exceed four years from the date of the license if the
2 license is issued to a custodial officer who is an employee of the sheriff as
3 provided in Section 831.5, except that the license shall be invalid upon the
4 conclusion of the person's employment pursuant to Section 831.5 if the four-year
5 period has not otherwise expired or any other condition imposed pursuant to this
6 article does not limit the validity of the license to a shorter time period.

7 (e) A license issued pursuant to Section 26170 to a peace officer appointed
8 pursuant to Section 830.6 is valid for any period of time not to exceed four years
9 from the date of the license, except that the license shall be invalid upon the
10 conclusion of the person's appointment pursuant to Section 830.6 if the four-year
11 period has not otherwise expired or any other condition imposed pursuant to this
12 article does not limit the validity of the license to a shorter time period.

13
14 32. California Penal Code **section 17030** states in full:

15 17030. As used in this part, "prohibited area" means any place where it is
16 unlawful to discharge a weapon.

17
18 33. Defendant CITY OF REDONDO BEACH broadly defines "Park" to include
19 all "open space." The Redondo Beach City ordinances state in pertinent part:

20 **4-35.01 Definitions.**

21 "Park" shall mean any publicly owned or leased property established, designated,
22 maintained, or otherwise provided by the City for recreational use or enjoyment,
23 including, but not limited to, any public areas located within or directly adjacent to
24 such property such as picnic areas, playgrounds, sports fields, athletic fields, sports
25 courts, trails, walkways, pathways, gardens, parking lots, parkettes, aquatic centers,
26 skateboard parks, community centers, senior centers, land designated by the City
27 as parkland or open space, landscaped or planted areas, and other buildings or
28

1 structures. The term “park” shall not include the beach as defined in Section 5-
2 8.01(a)(1) of this Code.” Emphasis added.

3
4 **4-35.06 Vehicles in parks.**

5 No person shall drive any motorized vehicle within any portion of any park,
6 excluding park parking lots. This section shall not apply to service vehicles used to
7 maintain or operate the park, or to police or emergency vehicles. (§ 1, Ord. 3051
8 c.s., eff. June 18, 2010)

9
10 **4-35.20 Weapons and explosives in parks.**

11 (a) It shall be unlawful for any person to use, carry, fire or discharge any firearm,
12 air gun, paint gun, BB gun, slingshot, archery device of any kind, or any other
13 form of weapon across, in or into a park. This subsection shall not apply to law
14 enforcement officers.

15
16 34. Redondo Beach municipal ordinance 5-8.01(a)(1) states:

17 “Beach” means the public beach or shoreline area bordering the Pacific Ocean,
18 owned, managed or controlled by the State of California, County of Los Angeles or
19 the City of Redondo Beach or that is open to the general public and located within
20 the City of Redondo Beach. For the purposes of this section, the beach shall
21 include all indoor and outdoor areas of the land in the City that extends 1,000 feet
22 seaward from the low mean tide line and landward to the following described lines:
23 to the top of the seaward face of the coastal bluffs west of the Esplanade from the
24 City’s southerly border to the southerly edge of the first residential private property
25 on the west side of the Esplanade and to the westerly edge of the private properties
26 on the west side of the Esplanade from Avenue A to Ainsworth Court at George
27 Freeth Way; to the westerly edge of the public sidewalk from Ainsworth Court to
28 the extended line of the southerly edge of the Redondo Beach Pier; to the westerly

