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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV-11-8026-MWF (JCGx) Date: August 13, 2012
Title: Sigitas Raulinaitis et al v. Los Angeles County Sheriff's Department

Present: The Honorable MICHAEL W. FITZGERALD

Rita Sanchez	Not Reported	N/A
Deputy Clerk	Court Reporter/Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendant:
Not Present	Not Present

Proceedings (In Chambers): ORDER GRANTING MOTION FOR SUMMARY JUDGMENT [17]

This matter is before the Court on Defendant Los Angeles County Sheriff's Department's ("LASD") Motion for Summary Judgment. (Docket No. 17). The Court found the matter appropriate for submission on the papers without oral argument. *See* Fed. R. Civ. P. 78(b) and Local Rule 7-15 (the Court may dispense with oral argument on any matter unless otherwise required). The matter was therefore removed from the Court's calendar. (Docket No. 28). For the reasons discussed in this Order, the LASD's Motion is GRANTED.

I. FACTUAL AND PROCEDURAL BACKGROUND

The material facts relevant to this Motion are undisputed. Plaintiffs Sigitas and Rima Raulinaitis (the "Raulinaitises") applied for and were denied permits to carry concealed weapons ("CCW Permits") by the LASD after specifying self-defense as the reason for seeking CCW Permits. (Plaintiffs' Response to Statement of Undisputed Fact "SUF" ¶¶ 17-23). The LASD issues CCW Permits on the basis of "good cause" as provided by California Penal Code section 26150 and found that the Raulinaitises' applications did not meet that standard. Cal. Penal Code §§ 26150, 12025 (2011), 12031 (2010). Under the LASD's policies, self-defense is an insufficient justification to establish good cause for the purpose of securing a CCW permit; an applicant must show "convincing evidence of a clear and present danger to life or of great bodily harm to the applicant, his spouse or dependent child, which cannot be reasonably avoided by alternative measures, and which danger would be

significantly mitigated by the applicant's carrying of a concealed firearm." (SUF ¶¶ 7-9). Essentially, an applicant must come forward with a reason beyond just the desire to carry a concealed weapon in order receive a CCW Permit.

On or about September 1, 2010, Sigitas Raulinaitis submitted a CCW Permit application to the LASD. (SUF ¶ 17). In his application, Sigitas Raulinaitis stated that he should be allowed to carry a concealed weapon because, as a construction contractor, real estate broker, and attorney, he has to be present at, and travel among, homes in dangerous areas where people may attempt to take his property or otherwise pose a physical threat. (SUF ¶18). Sigitas Raulinaitis also stated that he has two homes and traveling between those homes requires commuting through minimally populated areas where "self-protection may be required without warning." (*Id.*). Sigitas Raulinaitis further stated that he sometimes carries large amounts of cash. (*Id.*). It is undisputed that the LASD individually reviewed Sigitas Raulinaitis' application and determined that he failed to show good cause as required by California law and LASD policy. (SUF ¶ 19). It is also undisputed that the LASD denied Sigitas Raulinaitis' application because he failed to show convincing evidence of a threat to his life or safety that could not be adequately dealt with by existing law enforcement resources or reasonably avoided by alternative measures. (SUF ¶19). On November 10, 2010, Sigitas Raulinaitis sent a letter to the LASD in which he stated that his claim of self-defense was the only good cause he needed to obtain a CCW Permit. (SUF ¶ 20). Sigitas Raulinaitis provided no additional facts to justify his CCW Permit application.

Rima Raulinaitis also submitted a CCW Permit application to the LASD on September 28, 2010. (SUF ¶ 21). Rima Raulinaitis offered self-defense as the only justification for her CCW Permit application. (SUF ¶ 22). It is undisputed that the LASD individually reviewed her application and determined that she also failed to show good cause as required by LASD policy and California law. (SUF ¶ 23). Like Sigitas Raulinaitis, Rima Raulinaitis failed to show convincing evidence of a threat to her life or safety that could not be adequately dealt with by existing law enforcement resources or reasonably avoided by alternative measures. (*Id.*).

The Raulinaitises allege that the LASD good cause policy resulted in the rejection of their applications and violates the Second Amendment of the United States Constitution. The LASD moves for summary judgment and argues that it is entitled to judgment as a matter of law.

II. JUDICIAL NOTICE

The Court initially GRANTS the LASD's request for judicial notice. (Docket No. 19). The Court may take judicial notice of matters of public record outside the pleadings that are not subject to reasonable dispute. Fed. R. Evid. 201(b). The LASD requests judicial notice of publically available documents related to prior court proceedings in related matters. The Court has authority to take judicial notice of these materials, the request was unopposed. Accordingly, the Court takes judicial notice of the documents submitted in support of the Motion.

III. DISCUSSION

In deciding this Motion under Rule 56(a), the Court applies *Anderson*, *Celotex*, and their Ninth Circuit progeny. Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed. 2d 202 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24, 106 S.Ct. 2548, 91 L.Ed. 2d 265 (1986).

A. Second Amendment Right to Bear Arms

The Second Amendment protects the vital "individual right to possess and carry weapons in case of confrontation." *District of Columbia v. Heller*, 554 U.S. 570, 592, 128 S.Ct. 2783, 171 L.Ed. 2d 637 (2008). A critical subject of this protection is the "personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home." *McDonald v. City of Chicago*, 130 S.Ct. 3020, 3044, 177 L.Ed.2d 894 (2010) (construing this as the central holding of *Heller*). The Second Amendment, like many other precious rights enumerated in the Bill of Rights, is incorporated through the Fourteenth Amendment to prohibit states, in addition to the federal government, from impermissibly curtailing citizens' fundamental right to keep and bear arms. *Id.* at 3026. But the Supreme Court has

also recognized that this right is not absolute – regulations of the manner in which firearms are sold and carried may withstand constitutional scrutiny:

> Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues.

Heller, 554 U.S. at 626

When analyzing constitutional challenges, the Court must first determine the applicable level of scrutiny to apply: rational basis review, intermediate scrutiny, or strict scrutiny. The Supreme Court declined to apply rational basis review to the total ban on residential handgun possession at issue in *Heller*. *Id.* at 628, n.27 ("If all that was required to overcome the right to keep and bear arms was a rational basis, the Second Amendment would be redundant with the separate constitutional prohibitions on irrational laws, and would have no effect."). But the *Heller* Court left open the appropriate standard of review that should be applied, both to total bans and to more limited restrictions on selling and carrying firearms. *Id.* at 634 (declining to establish a level of constitutional scrutiny for Second Amendment challenges). The Court applies the reasoning from *Heller* in deciding this Motion. Accordingly, the regulations challenged by the Raulinaitises are reviewed pursuant to either intermediate or strict scrutiny – higher standards than mere rational basis review.

B. Ninth Circuit Applications of *Heller*

The Ninth Circuit has yet to elaborate on the precise level of scrutiny to be applied to Second Amendment challenges. But, in applying *Heller*, the Ninth Circuit has held that there are permissible limits on the individual right to possess weapons as provided by the Second Amendment. *See, e.g., U.S. v. Dugan*, 657 F.3d 998, 999

(9th Cir. 2011) (applying *Heller* and upholding federal law precluding individuals who are users of or addicted to controlled substances from trafficking in firearms); *Nordyke v. King*, 681 F.3d 1041, 1044 (9th Cir. 2012) ("Thus read, the ordinance regulates the sale of firearms at Plaintiffs' gun shows only minimally, and only on County property. No matter how broad the scope of the Second Amendment – an issue that we leave for another day – it is clear that, as applied to Plaintiffs' gun shows and as interpreted by the County, this regulation is permissible."); *U.S. v. Henry*, -- F.3d --, 2012 WL 3217255, at *3 (9th Cir. Aug. 9, 2012) (applying *Heller* but declining to reach the appropriate level of constitutional scrutiny). The Ninth Circuit's analysis in these cases also recognizes that the core protection afforded by the Second Amendment under recent Supreme Court precedent is the right to bear arms for the purpose of self-defense in the home. *See, e.g., U.S. v. Morsette*, 622 F.3d 1200, 1202 (9th Cir. 2010) ("*Heller* and *MacDonald* concern the right to possess a firearm in one's home for self-defense.").

It is unsurprising, then, that a trend is emerging in other circuits (consistent with the Ninth Circuit's decisions and reasoning following *Heller*) in which courts apply intermediate scrutiny to Second Amendment challenges, particularly where the right to keep and bear arms ***outside*** the home is implicated. At least six circuits have so held. *See Ezell v. City of Chicago*, 651 F.3d 684, 708 (7th Cir. 2011) (near-total handgun ban, even in the home, subject to "rigorous" review, "if not quite 'strict scrutiny'"); *United States v. Skoien*, 614 F.3d 638, 641 (7th Cir. 2010) (applying intermediate scrutiny to a regulation prohibiting misdemeanor domestic batterers from carrying firearms); *United States v. Marzzarella*, 614 F.3d 85, 97 (3rd Cir. 2010) (applying intermediate scrutiny to a regulation of firearm sales); *United States v. Booker*, 644 F.3d 12, 25 (1st Cir. 2011) (substantively applying intermediate scrutiny standard); *United States v. Masciandaro*, 638 F.3d 458, 471 (4th Cir. 2011) ("[w]hile we find the application of strict scrutiny important to protect the core right of the self-defense of a law-abiding citizen in his home . . . we conclude that a lesser showing is necessary with respect to laws that burden the right to keep and bear arms outside of the home."); *United States v. Reese*, 627 F.3d 792, 802 (10th Cir. 2010) (applying intermediate scrutiny); *Heller v. District of Columbia*, 670 F.3d 1244, 1257 (D.C. Cir. 2011) ("As between strict and intermediate scrutiny, we conclude the latter is the more appropriate standard for review of gun registration laws.").

Based on the Ninth Circuit's reasoning in post-*Heller* Second Amendment cases and persuasive authority from other circuits, the Court concludes that a policy that does not curtail the core protection of the Second Amendment, the right to keep and bear arms for self-defense in the home, is subject to intermediate scrutiny. The right at issue in this case, the right to carry a concealed weapon outside of one's home, does not implicate the right to keep and bear arms for self-defense in the home. *See, e.g.*, *Heller*, 554 U.S at 635 (core Second Amendment rights involve the ability to maintain "arms in defense of hearth and home."). Nor does the LASD use section 26150 and the good cause policy to create a total ban on gun ownership or concealed weapons. It is undisputed that in 2010 there were approximately 400 CCW Permits issued by the LASD. Accordingly, intermediate scrutiny is appropriate.

C. LASD's Good Cause Policy Satisfies Intermediate Scrutiny

"To withstand intermediate scrutiny, a statutory classification must be substantially related to an important governmental objective." *Clark v. Jeter*, 486 U.S. 456, 461, 108 S.Ct. 1910, 100 L.Ed. 2d 465 (1988). The impetus is on the government to demonstrate a "substantial relation" between the restriction and an "important government objective." *See City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 465, 122 S.Ct. 1728, 152 L.Ed. 2d 670 (2002).

The California Legislature gives the Los Angeles County Sheriff discretion to issue CCW Permits to qualified individuals who can show good cause. The LASD's good cause policy is substantially related to the government objective of promoting public safety. The alternative to the LASD policy would be a virtually unlimited number of concealed weapons, which would be carried by virtually any non-felon who wished to do so. While California could adopt that regime, the Second Amendment does not require it.

Importantly, the California Penal Code provides numerous exceptions to its firearm restrictions that properly preserve citizens' rights to bear and keep arms for established purposes and in the face of impending danger. *See, e.g.*, Cal. Penal Code

§ 26045(a) ("Nothing in Section 25850 is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that any person or the property of any person is in immediate, grave danger and that the carrying of the weapon is necessary for the preservation of that person or property."); Cal. Penal Code § 26050 ("Nothing in Section 25850 is intended to preclude the carrying of a loaded firearm by any person while engaged in the act of making or attempting to make a lawful arrest."). It is also affirmatively permissible for Californians to keep and bear loaded, otherwise lawful, weapons in their private residences. Cal. Penal Code § 26055. Consequently, the California Penal Code provides other avenues for individuals to legally self-defend, so the impact of the LASD's good cause policy is relatively narrow.

Accordingly, the Court concludes that the LASD's CCW Permit regime restricts the use of loaded firearms in public, substantially furthering the important governmental interest of promoting public safety, and satisfying intermediate constitutional scrutiny.

D. LASD's Good Cause Policy Satisfies Intermediate Scrutiny as Applied to Plaintiffs

The LASD's policies were applied to the Raulinaitises in a consistent manner. It is undisputed that it is the LASD's policy to deny CCW Permit applications where the stated justification is merely one of "self-defense." It is also undisputed that, essentially, that was the stated justification offered by both Sigitas and Rima Raulinaitis. Neither Sigitas nor Rima Raulinaitis offered evidence at the time of application of any specific threat. It is also undisputed that the LASD reviews each CCW Permit application individually for good cause, and the LASD conducted such a review on the Raulinaitises' CCW Permit applications. (SUF ¶¶ 8, 19, 23). Accordingly, the Raulinaitises lacked good cause for CCW Permits under the LASD's constitutionally permissible policy, and the denials of their applications did not constitute violations of their constitutional rights.

E. Courts in this District Agree that the LASD's Good Cause Policy Withstands Constitutional Scrutiny

The LASD's good cause policy has already been found to withstand constitutional scrutiny in the Central District as a matter of law. Two different district courts in the Central District recently granted summary judgment in favor of the LASD on the exact question of whether the LASD's good cause policy violates applicants' Second Amendment rights. The courts determined that the policy is constitutionally sound, both facially and as applied, and allows sufficient alternate channels for the exercise of applicants' important constitutional right to bear arms in self-defense. Jonathan Birdt, the Raulinaitises' attorney, was a plaintiff in one of these cases and plaintiffs' counsel in the second.

In *Jonathan Birdt v. Charlie Beck, et al.*, No. CV10-8377-JAK (JEMx), the court granted summary judgment in favor of the LASD, holding that the LASD's "policies implementing California's concealed weapons laws" do not violate the Second Amendment even though they require applicants to show good cause in order to secure a permit. (Docket No. 12). The court also held that the LASD's policies were constitutional as applied to the plaintiff in that case, the Raulinaitises' current counsel of record, Jonathan Birdt, because the policy was applied in a consistent manner. (*Id*.).

Similarly, in *Thompson v. Torrance Police Department and the Los Angeles County Sheriff's Department*, CV11-6154-SJO (JCx), the plaintiff alleged that he was denied a CCW Permit by the LASD for failure to show good cause. Thompson alleged that the denial was an unconstitutional infringement of his Second Amendment rights, stating that the LASD's good cause policy is unconstitutional in that it requires justification beyond the simple assertion of self-defense. Thompson alleged that he often carried large amounts of cash in his position as a California bail agent and that his proximity to school zones prevented him from carrying an exposed weapon, necessitating his CCW Permit application. Thompson alleged a violation of 42 U.S.C. § 1983 on this basis. (*See generally* Docket No. 12, Compl.).

On July 2, 2012, the court granted LASD's motion for summary judgment in *Thompson*, concluding that LASD's policy that an applicant cannot show good cause

merely by stating that a license is necessary for self-defense withstands intermediate constitutional scrutiny. As such, the LASD's policy was held to be constitutional, both facially and as applied to Thompson. (*See generally* Docket No. 29). *See also Richards v. County of Yolo*, 821 F. Supp. 2d 1169, 1174-75 (E.D. Cal. May 16, 2011) (county's concealed weapons policy does not substantially burden Second Amendment rights because alternative opportunities to carry weapons in self-defense exist); *Peruta v. County of San Diego*, 758 F. Supp. 2d 1106, 1116 (S.D. Cal. 2010) (good cause standard for issuing CCW Permits withstands intermediate constitutional scrutiny).

IV. CONCLUSION

Because the LASD's policy implementing the California Penal Code's concealed weapons restriction is constitutionally permissible, both facially and as applied to the Raulinaitises, there has been no violation of their constitutional rights, and there was no resulting violation of 42 U.S.C. §§ 1983 and 1988. Accordingly, Defendant is entitled to summary judgment as a matter of law. Defendant's Motion is therefore granted.

IT IS SO ORDERED.

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