

**NRA VICTORY IN THE *PERUTA* “SHALL-ISSUE” CALIFORNIA CCW CASE,
WHAT DOES IT MEAN? WHAT HAPPENS NEXT?**

As of: April 18, 2014

A landmark ruling came down on February 14, 2014 in the NRA-supported case of [*Peruta v. County of San Diego*](#). A three judge panel from the Ninth Circuit Court of Appeals struck down San Diego County Sheriff William Gore’s policy requiring that law-abiding adults prove they have a special need in order to establish a “good cause” to be issued a license to carry a firearm in public before he would issue them one.

The *Peruta* ruling affirmed that the Second Amendment protects a law-abiding citizen’s right to bear arms outside of home--in *some* manner. In other words, the court held that while the government can regulate and even ban some forms of carry (like open *or* concealed) it cannot ban *all* forms of carry. California law generally provides only one way to lawfully carry arms in public, i.e., with a carry license. If the *Peruta* decision stands, California sheriffs and police chiefs will no longer be able to deny licenses to carry to people simply because they cannot prove that they have a special need to defend themselves for the license.

Under the legal precedent established by the *Peruta* case, governments in other Ninth Circuit jurisdictions will also have to provide their residents some way to carry. While most already do, this will become an issue for the few holdout anti-Second Amendment cities and counties in California, and a few hold-out states in the Ninth Circuit, like Hawaii.

So what happens next?

The *Peruta* decision is still not final. At least not yet. The three judge panel ruling in the *Peruta* case could be reconsidered by what's called a "limited en banc" panel in the Ninth Circuit, and it could also be reconsidered by the U.S. Supreme Court. To read more about the process and how this case could develop, visit [here](#).

In the Ninth Circuit, a "limited en banc" panel is the Chief Judge and ten other judges randomly selected from all of the 27 Ninth Circuit judges. Those eleven judges would then reconsider whether the ruling of the three judge panel was correct.

Sheriff Gore [announced](#) that he would not appeal the *Peruta* three judge panel decision, either to an *en banc* panel or to the Supreme Court. His deadline for doing so has passed.

The Ninth Circuit rules allow any single Ninth Circuit judge—on his or her own accord—to call for a vote by all the Circuit's judges on whether the case should be reheard *en banc*. (Gen. Ord. 5.4(c)(3)). But no judge called for such a vote by the deadline.

But, recognizing how the *Peruta* decision could impact their gun banning agenda, the [California Attorney General](#), the [California Police Chiefs' Association](#), and the anti-gun-rights group [the Brady Campaign](#), all filed motions seeking to "intervene" into the *Peruta* case so that *they* could ask the entire Ninth Circuit court bench to vote on whether to have *en banc* review. The propriety

of these intervention motions is disputed by the *Peruta* plaintiffs, but a vote by all the Ninth Circuit judges on whether to have an *en banc* review is inevitable.

Such a vote would either occur in the *Peruta* case, or it would happen in one of the other two cases, [Richards](#) and [Baker](#), that were argued on the same day as the *Peruta* case in front of the same three judge panel. The Yolo Sheriff in the *Richards* case has already asked for *en banc* review, and the Hawaii officials who are the defendants in the *Baker* case are going to ask for *en banc* review as well. And even if none of these cases are chosen for *en banc* rehearing, there are still a half-dozen or so other licensed carry cases pending in the Ninth Circuit, any of which could trigger an *en banc* rehearing on the general issue that lies at the heart of the *Peruta* decision; whether the government can require people to demonstrate a special need beyond self-defense in order to establish “good cause” to get a license to carry.

Because a petition on whether the issue should be heard by an *en banc* panel was inevitable, the *Peruta* plaintiffs did not oppose the Attorney General’s request to intervene and to ask for a rehearing or rehearing *en banc*. Of course, because the *Peruta* three judge panel decision is emphatically correct, the *Peruta* plaintiffs will let the court know that there is no need for an *en banc* rehearing, and the request for *en banc* review should be rejected, if and when that time comes.

In the meantime, the other potential interveners have no business being in the *Peruta* case.

[Formal oppositions](#) to the other motions attempting to intervene were filed on March 26, 2014.

If the Court grants any of these motions to intervene, the en banc process will begin. The Ninth Circuit is the only circuit that appoints a Ninth Circuit judge as an En Banc Coordinator to supervise the en banc process. Coincidentally, Judge Sidney Runyan Thomas—the only dissenting judge in the *Peruta* decision—is the En Banc Coordinator. If any of the motions to intervene are granted, the petition for rehearing en banc will be circulated to all active judges. At that time, any interested non-panel judge will have potentially up to five weeks to decide whether to request a formal notice from the original panel asking whether the original panel wants to rehear the case. At this time, the original three judge panel may request that the non-petitioning party file a response to the petition. However, if the judges are not interested and no one makes a request to the original panel within the allotted time, the original panel will issue an order stating that the petition is denied.

But, if any Ninth Circuit judge is interested and requests a notice from the original panel, the panel is supposed to inform the rest of the court whether it wants to rehear the case as soon as possible. Ultimately it has ninety days from the date of the request or ninety days from the date the petition was submitted, whichever is later.

Even if the original panel informs the court it does not want to rehear the case, any Ninth Circuit judge can still make a call for *en banc* vote. At the time a call for *en banc* vote is made, if not done so before, the non-petitioning party is ordinarily required to file a response to the petition within three weeks. After a response is filed, or if no response was required, the judges will have

an additional three weeks to communicate with each other on whether to hear the case *en banc*. Once those three weeks end, the En Banc Coordinator will notify all active judges to cast their vote within fourteen days of the notice.

A majority vote is required for the Court to grant the petition. This means 14 judges must vote in favor of rehearing the case *en banc*. If a majority of the judges vote to hear the case *en banc*, then a panel of Chief Judge Kozinski and ten other Ninth Circuit judges will be randomly selected to reconsider the three judge panel's ruling—but even a judge from the original three-judge panel can be still be selected for the *en banc* panel. However, if the vote fails to obtain majority, the petition will be denied and the three judge panel's opinion will still stand.

Roughly two thirds of the Ninth Circuit judges are appointed by Democratic presidents, and one third of those judges are appointed by Republican presidents. While this statistic is not determinative of the outcome, it is noteworthy and gives an indication of what an eleven judge *en banc* review panel might look like philosophically.

As a result, the case could be tied up for awhile on *en banc* review, perhaps for over a year. The *Richards* and *Baker* cases would probably be heard *en banc* as well, possibly all at the same time.

The Ninth Circuit rules for *en banc* procedures are located in Chapter V of the [Ninth Circuit General Orders](#). For more details regarding the *en banc* procedure and the estimated due dates, please see the [Ninth Circuit En Banc Procedure Guide](#) and our custom [flowchart](#). If you would

like to know more about the role of the En Banc Coordinator, please read Stephen L. Wasby's "[*A Watchdog For the Good of The Order*](#)" [*The Ninth Circuit's En Banc Coordinator*](#).

Will the Supreme Court Hear the Case?

An *en banc* panel has the authority to overturn the three judge panel decision. If the Ninth Circuit votes that an *en banc* panel should rehear the case and then overturns the three judge panel, the *Peruta* plaintiffs will then ask the Supreme Court to hear the case. If an *en banc* panel reviews the three judge panel decision and upholds it, the Attorney General Harris can still petition the Supreme Court for review. If the Ninth Circuit decides not to have an *en banc* review, the Attorney General Harris could then ask the Supreme Court to review the case.

Obviously, the Supreme Court also has the authority to either uphold or overturn the *Peruta* decision (either by the three judge panel or an *en banc* panel). The Supreme Court could also choose to not review the case at all.

The *Peruta* opinion is comprehensive, thoroughly researched, well-reasoned and well-written. Nonetheless, the issue of licensed public carry is controversial and highly political in California. One thing is certain; the well financed big-firm lawyers working for the gun ban lobby will stop at nothing in their attempts to overturn this victory for Second Amendment rights. We will fight with everything we have to keep that from happening.

Stay tuned for updates on how the Court rules on these requests to intervene and on the request(s)

for *en banc* review by following the news at www.calgunlaws.com.

If the *Peruta* Decision Stands, What Does It Mean?

Technically, the *Peruta* opinion only affects the San Diego County Sheriff. His policy was the only one challenged by this specific lawsuit. But the Ninth Circuit's reasoning applies equally to all California sheriffs and police chiefs who issue licenses to carry, and in fact would apply in all jurisdictions within the Ninth Circuit: Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, and Washington. Some counties may try to hold on to their unconstitutional policies. New lawsuits will be filed to compel them to follow the constitution.

Apply For a License to Carry Now!

People have asked whether they should apply for a carry license to carry now, or wait to see what happens in the *Peruta* case. Because there is no final judgement in *Peruta* yet, there is no final court order or judgment forcing authorities to issue licenses under the *Peruta* criteria. If your particular sheriff or police chief would not issue carry licenses before *Peruta*, technically they are not legally required to change that yet.

Nonetheless, some authorities can see the writing on the wall and are accepting an applicant's general desire for self-defense as sufficient "good cause" for a carry license based on the reasoning in the *Peruta* decision.

[Orange](#) and [Ventura](#) counties have changed their policies in light of the *Peruta* decision, at least for the time being. Although the jurisdictions have included qualifying language in their policy-change announcements that would allow them to return to their former policy if *Peruta* is overturned, applying for a carry license now will send a message to the authorities and politicians in those jurisdictions that people demand respect for their Second Amendment rights! Many of these jurisdictions that are changing their policies were getting bad legal advice from gun-ban lobby lawyers who told them they did not have discretion to go shall-issue. Now that they have read the *Peruta* decision, they realize that they can accept self-defense as good cause, and are coming “off the fence.”

Whether to apply now is a personal decision that each individual should make based on their individual circumstances. But we encourage you to apply now! The procedure has been simplified by NRA supported legislation that passed in 2012, and a denial cannot be lawfully used against you in the future if you apply again.

For More Information

For more information about the *Peruta* case, and information about getting a license to carry in California generally, check out the reference materials posted [here](#). We will try our best to keep everyone updated as quickly as possible as these cases move through the system. Stay tuned in to [NRA-ILA Alerts](#) for California updates.

Support the Fight!

The NRA is committed to protecting the rights of citizens everywhere to bear arms. As things develop, the NRA will help its members in holdout jurisdictions to enforce the *Peruta* ruling against every recalcitrant county and state in the Ninth Circuit.

You can assist in the fight to defend gun owners' rights in California courts by donating to the [NRA Legal Action Project](#) today. For a summary of some of the many actions the NRA has taken on behalf of California gun owners, including the tremendous recent victory in the *Peruta* case [click here](#).

Second Amendment supporters should be careful about supporting litigation efforts promised by other individuals and groups without access to the necessary funding, relationships, firearm experts and experienced lawyers on the NRA's national legal team. The NRA's team of highly regarded civil rights attorneys and scholars has the resources, skill and expertise to maximize the potential for victory.