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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

11 RICHARD ENOS, JEFF BASTASINI,
12 LOUIE MERCADO, WALTER GROVES,
13 MANUEL MONTEIRO, EDWARD
ERIKSON, VERNON NEWMAN, JEFF
LOUGHRAN and WILLIAM EDWARDS,

14 Plaintiffs,

15 vs.

16
17 ERIC HOLDER, as United States Attorney
General, and ROBERT MUELLER, III, as
18 Director of the Federal Bureau of
Investigation,

19 Defendants.
20

CASE NO.: 2:10-CV-02911-JAM-EFB

FIRST AMENDED COMPLAINT
AND REQUEST FOR
INJUNCTIVE/DECLARATORY RELIEF

VIOLATIONS OF THE FIRST, SECOND,
FIFTH, and TENTH AMENDMENTS OF
THE UNITED STATES CONSTITUTION

18 U.S.C. § 921 *et seq.*

18 U.S.C. § 922 *et seq.*

18 U.S.C. § 925A

28 U.S.C. § 2412

42 U.S.C. § 1988

21
22 **PARTIES**

23 1. Plaintiff RICHARD ENOS, is an individual who is a citizen/resident of the State of
24 California. ENOS lives in San Joaquin County.

25 2. Plaintiff JEFF BASTASINI, is an individual who is a citizen/resident of the State of
26 California.

27 3. Plaintiff LOUIE MERCADO, is an individual who is a citizen/resident of the State of
28 California.

1 4. Plaintiff WALTER GROVES, is an individual who is a citizen/resident of the State of
2 California.

3 5. Plaintiff MANUEL MONTEIRO, is an individual who is a citizen/resident of the State of
4 California.

5 6. Plaintiff EDWARD ERIKSON, is an individual who is a citizen/resident of the State of
6 California.

7 7. Plaintiff VERNON NEWMAN, is an individual who is a citizen/resident of the State of
8 California.

9 8. Plaintiff JEFF LOUGHRAN, is an individual who is a citizen/resident of the State of
10 North Dakota.

11 9. Plaintiff WILLIAM EDWARDS, is an individual who is a citizen/resident of the State of
12 California.

13 10. Defendant ERIC HOLDER is the United States Attorney General and is charged with
14 interpretation and enforcement of 18 U.S.C. §§ 921 *et seq.* and 922 *et seq.*

15 11. Defendant ROBERT MUELLER, III is the Director of the Federal Bureau of
16 Investigation and is charged with interpretation and enforcement of 18 U.S.C. §§ 921 *et*
17 *seq.* and 922 *et seq.*

18 **JURISDICTION AND VENUE**

19 12. This Court has jurisdiction over the lawsuit because the action arises under 18 U.S.C. §§
20 921 *et seq.*, 922 *et seq.* and 925A.

21 13. As this action arises under the United States Constitution this Court also has jurisdiction
22 pursuant to 28 U.S.C. § 1331.

23 14. As the Plaintiffs are seeking declaratory relief, this Court has jurisdiction over this action
24 pursuant to 28 U.S.C. §§ 2201 and 2202.

25 15. Venue for this action is properly in this District pursuant to 28 U.S.C. § 1391.

26 16. All conditions precedent, including exhaustion of administrative remedies where
27 required, have been performed, have occurred, are futile or unnecessary where the
28 government infringes on a fundamental right.

FACTS

17. The State of California works in conjunction with the Federal Government to interpret statutes and implementing regulations that restrict the “right to keep and bear arms” of people convicted of Misdemeanor Crimes of Domestic Violence.

18. The Federal Government’s definition of Misdemeanor Crimes of Domestic Violence is found at 18 U.S.C. § 921(a)(33):

(33) (A) Except as provided in subparagraph (C), the term "misdemeanor crime of domestic violence" means an offense that--

(i) is a misdemeanor under Federal or State law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

(B) (i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter [18 USCS § § 921 et seq.], unless--

(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(aa) the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter [18 USCS §§ 921 et seq.] if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

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1 19. It is federal criminal offense for any person to sell or otherwise dispose of any firearm to
2 a person who has been convicted of a Misdemeanor Crime of Domestic Violence. 18
3 U.S.C. § 922(d)(9).

4 20. It is federal criminal offense for any person who has been convicted of a Misdemeanor
5 Crime of Domestic Violence to possess a firearm. 18 U.S.C. § 922(g)(9).

6 21. Thus Federal Law imposes a lifetime ban on the “right to keep and bear arms” for persons
7 convicted of Misdemeanor Crimes of Domestic Violence, subject to the individual states’
8 power to restore this fundamental civil right under state law.

9 22. Federal Law also provides a means for felons to have their “right to keep and bear arms”
10 restored under procedures promulgated and implemented by the Attorney General. 18
11 U.S.C. § 925(c).

12 23. California Penal Code § 12021(c)(1) sets forth a list of specific crimes that subject a
13 person convicted of certain misdemeanors to a ten (10) year prohibition against owning,
14 possessing and purchasing firearms (and ammunition). This list includes, but is not
15 limited to the following Misdemeanor Crimes of Domestic Violence:

16 a. Battery Against a Spouse/Cohabitant. CA Penal Code § 243(e).

17 b. Corporal Injury to Spouse/Cohabitant. CA Penal Code § 273.5.

18 24. Pursuant to Penal Code § 12021(c)(1), the State of California has clearly and
19 unequivocally set forth a policy of limiting firearms prohibitions, for persons convicted of
20 Misdemeanor Crimes of Domestic Violence, to a ten (10) year period such that by the
21 passage of time the misdemeanants’ “right to keep and bear arms” is restored, without
22 qualification, by operation of law.

23 25. California Penal Code § 12021(c)(3) also provides the means for a person convicted of a
24 Misdemeanor Crime of Domestic Violence, prior to the date the state law went into
25 effect, to have a Superior Court Judge restore the fundamental “right to keep and bear
26 arms” on a case by case basis.

27 26. Even though The State of California has a policy of restoring the “right to keep and bear
28 arms” through a hearing process and by operation of law (through the passage of time),

1 the Federal Government refuses to recognize California's restoration of rights and
2 rehabilitation policies.

3 27. As a direct consequence of the Federal Government's refusal to recognize California's
4 restoration and rehabilitation policies Plaintiffs herein (and all other persons similarly
5 situated) continue to be subject to a lifetime prohibition of the "right to keep and bear
6 arms" under Federal Law.

7 28. This interpretation of the law by the Federal Government results in five (5) wrongful and
8 unconstitutional consequences:

- 9 a. Plaintiffs (and all other persons similarly situated) are subject to federal criminal
10 prosecution if they attempt to exercise their fundamental "right to keep and bear
11 arms" after the State of California has restored their rights.
- 12 b. Plaintiffs (and all other persons similarly situated) cannot lawfully purchase a
13 firearm to exercise their fundamental "right to keep and bear arms" because they
14 cannot pass the background check required by state and federal law.
- 15 c. Plaintiffs (and all other persons similarly situated) are denied a federal statutory
16 remedy to restore their "right to keep and bear arms" resulting in a denial of their
17 right to petition their government for redress of grievances.
- 18 d. Plaintiffs, as misdemeanants, (and all other persons similarly situated) are denied
19 a federal statutory remedy to restore their "right to keep and bear arms" even as
20 convicted felons have a statutory right to restore their rights under 18 U.S.C. §
21 925(c), thus resulting in a *de jure* denial of equal protection of the law.
- 22 e. The federal government has usurped the power retained by the State of California,
23 and the people, for defining a misdemeanor crime of domestic violence and
24 defining the procedures for restoration of the "right to keep and bear arms"
25 following a conviction for a misdemeanor crime of domestic violence.

26 29. Plaintiff ENOS:

- 27 a. On or about July 15, 1991, Plaintiff RICHARD ENOS plead *nolo contendere* and
28 was convicted of a misdemeanor violation of California Penal Code § 273.5 (a).

- 1 b. In 1993 the California Legislature amended Penal Code § 12021 and added Penal
2 Code § 273.5 to the list of misdemeanors which prohibit a person from
3 acquiring/possessing a firearm for 10 years after the date of conviction.
- 4 c. On September 13, 1994, the Congress passed the Violence Against Women Act,
5 and in 1996 Congress amended the act to impose a lifetime prohibition against the
6 acquisition/possession of firearms by misdemeanants convicted of Domestic
7 Violence. See: 18 U.S.C. §§ 921 and 922 *et seq.*
- 8 d. In March of 1999, Plaintiff RICHARD ENOS, petitioned for a record clearance
9 under Penal Code § 1203.4.
- 10 e. On May 25, 1999, Plaintiff RICHARD ENOS's petition was granted by the
11 Honorable Ray E. Cunningham, Superior Court Judge. Plaintiff's plea of guilty
12 was withdrawn, a plea of not guilty was entered and the court dismissed the case.
- 13 f. On May 12, 2000, Plaintiff RICHARD ENOS filed a PETITION FOR
14 RESTORATION OF CIVIL RIGHTS (FIREARM POSSESSION).
- 15 g. On Jun 16, 2000, the PETITION FOR RESTORATION OF CIVIL RIGHTS
16 (FIREARM POSSESSION) was granted by the Honorable Thang N. Barrett.
- 17 h. In February of 2001, Plaintiff RICHARD ENOS caused a letter to be sent to the
18 California Department of Justice referencing the order by Judge Barrett restoring
19 his rights. At that point in time the State of California had cleared RICHARD
20 ENOS to own/possess firearms.
- 21 i. In August of 2004, Plaintiff RICHARD ENOS was denied a firearm purchase and
22 advised by the State of California that the denial was being maintained by U.S.
23 Department of Justice, Federal Bureau of Investigation, National Instant Criminal
24 Background Check System.
- 25 j. As of October 25, 2010, Plaintiff RICHARD ENOS is permitted to acquire and
26 possess firearms under the laws of the State of California.
- 27 k. As of October 25, 2010, Plaintiff RICHARD ENOS is prohibited from acquiring
28 and possessing firearms due to threat of criminal prosecution under federal law.

1 1. But for Defendants' wrongful interpretation of the federal laws regulating firearm
2 possession and purchase by domestic violence misdemeanants, Plaintiff
3 RICHARD ENOS would acquire, keep and bear arms for, among other lawful
4 purposes, self-defense in his home.

5 30. Plaintiffs BASTASINI, MERCADO, GROVES and MONTEIRO:

- 6 a. Plead or were convicted of misdemeanors under California Penal Code § 273.5.
- 7 i. Plaintiff BASTASINI plead no contest (and/or guilty) to a misdemeanor
8 charge of California Penal Code § 273.5 on March 25, 1991. He was not
9 represented by counsel.
- 10 ii. Plaintiff LOUIE MERCADO plead no contest (and/or guilty) to a
11 misdemeanor charge of California Penal Code § 273.5 on December 17,
12 1990. He was represented by counsel.
- 13 iii. Plaintiff WALTER GROVES plead no contest (and/or guilty) to a
14 misdemeanor charge of California Penal Code § 273.5 on January 12,
15 1990. He was represented by counsel.
- 16 iv. Plaintiff MANUEL MONTEIRO plead no contest (and/or guilty) to a
17 misdemeanor charge of California Penal Code § 273.5 on May 27, 1992.
- 18 b. In 1993 the California Legislature amended Penal Code § 12021 and added Penal
19 Code § 273.5 to the list of misdemeanors which prohibit a person from
20 acquiring/possessing a firearm for 10 years after the date of conviction.
- 21 c. On September 13, 1994, Congress passed the Violence Against Women Act, and
22 in 1996 Congress amended the act to impose a lifetime ban on the
23 acquisition/possession of firearms by misdemeanants convicted of Domestic
24 Violence. 18 U.S.C. §§ 921 and 922 *et seq.*
- 25 d. Plaintiffs JEFF BASTASINI, LOUIE MERCADO, WALTER GROVES and
26 MANUEL MONTEIRO have not availed themselves of the relief provisions
27 under California Penal Code § 12021(c)(3) as this would be a futile act based
28 upon the passage of ten (10) years and upon the Federal Government's current

- 1 interpretation of 18 U.S.C. §§ 921 and 922 *et seq.*
- 2 e. Plaintiffs JEFF BASTASINI, LOUIE MERCADO, WALTER GROVES and
- 3 MANUEL MONTEIRO have availed themselves of the provisions of California
- 4 Penal Code § 1203.4. Their petitions were granted.
- 5 f. As of October 25, 2010, Plaintiffs JEFF BASTASINI, LOUIE MERCADO,
- 6 WALTER GROVES and MANUEL MONTEIRO are permitted to acquire and
- 7 possess firearms under the laws of the State of California.
- 8 g. As of October 25, 2010, Plaintiffs JEFF BASTASINI, LOUIE MERCADO,
- 9 WALTER GROVES and MANUEL MONTEIRO are prohibited from acquiring
- 10 and possessing firearms due to a credible threat of criminal prosecution under
- 11 federal law.
- 12 h. But for Defendants' wrongful interpretation of the federal laws regulating firearm
- 13 possession and purchase by domestic violence misdemeanants, Plaintiffs JEFF
- 14 BASTASINI, LOUIE MERCADO, WALTER GROVES and MANUEL
- 15 MONTEIRO would acquire, keep and bear arms for, among other lawful
- 16 purposes, self-defense in their homes.
- 17 31. Plaintiffs EDWARD ERIKSON and VERNON NEWMAN:
- 18 a. Plead or were convicted of domestic violence misdemeanors.
- 19 i. Plaintiff ERIKSON's date of conviction was 1996.
- 20 ii. Plaintiff NEWMAN's date of conviction was 1997.
- 21 b. In 1993 the California Legislature amended Penal Code § 12021 to create a list of
- 22 domestic violence misdemeanors which prohibit a person from
- 23 acquiring/possessing a firearm for 10 years after the date of conviction.
- 24 c. On September 13, 1994, Congress passed the Violence Against Women Act, and
- 25 in 1996 Congress amended the act to impose a lifetime ban on the
- 26 acquisition/possession of firearms by misdemeanants convicted of Domestic
- 27 Violence. 18 U.S.C. §§ 921 and 922 *et seq.*
- 28 d. Plaintiffs ERIKSON and NEWMAN cannot avail themselves of the relief

- 1 provisions under California Penal Code § 12021(c)(3) by the terms of that statute.
2 (i.e., their convictions occurred after 1993.)
- 3 e. Plaintiffs ERIKSON and NEWMAN have availed themselves of the provisions of
4 California Penal Code § 1203.4. Their petitions were granted.
- 5 f. As of October 25, 2010, Plaintiffs ERIKSON and NEWMAN are permitted to
6 acquire and possess firearms under the laws of the State of California.
- 7 g. As of October 25, 2010, Plaintiffs ERIKSON and NEWMAN are prohibited from
8 acquiring and possessing firearms due to a threat of criminal prosecution under
9 federal law.
- 10 h. But for Defendants' wrongful interpretation of the federal laws regulating firearm
11 possession and purchase by domestic violence misdemeanants, Plaintiffs
12 ERIKSON and NEWMAN would acquire, keep and bear arms for, among other
13 lawful purposes, self-defense in their homes.
- 14 32. Plaintiff JEFF LOUGHRAN was convicted of a misdemeanor, California Penal Code §
15 242, on May 26, 1992.
- 16 a. In 1993 the California Legislature amended Penal Code § 12021 to create a list of
17 misdemeanors which prohibit a person from acquiring/possessing a firearm for 10
18 years after the date of conviction.
- 19 b. On September 13, 1994, Congress passed the Violence Against Women Act, and
20 in 1996 Congress amended the act to impose a lifetime ban on the
21 acquisition/possession of firearms by misdemeanants convicted of Domestic
22 Violence. 18 U.S.C. §§ 921 and 922 *et seq.*
- 23 c. On May 26, 1994, Plaintiff LOUGHRAN was granted relief under California
24 Penal Code § 1203.4.
- 25 d. On November 23, 1998, Plaintiff LOUGHRAN was granted a motion to vacate
26 his 1992 judgment of conviction pursuant to a *Writ of Error Coram Nobis*.
- 27 e. Plaintiff LOUGHRAN has not availed himself of the relief provisions under
28 California Penal Code § 12021(c)(3) as this would be a futile act based upon

1 passage of 10 years time and the Federal Government's current interpretation of
2 18 U.S.C. §§ 921 and 922 *et seq.*

- 3 f. As of October 25, 2010, Plaintiff LOUGHRAN is permitted to acquire and
4 possess firearms under the laws of California and North Dakota.
- 5 g. As of October 25, 2010, Plaintiff LOUGHRAN is prohibited from acquiring and
6 possessing firearms due to a threat of criminal prosecution under federal law.
- 7 h. But for Defendants' wrongful interpretation of the federal laws regulating firearm
8 possession and purchase by domestic violence misdemeanants, Plaintiff
9 LOUGHRAN would acquire, keep and bear arms for, among other lawful
10 purposes, self-defense in his home.

11 33. Plaintiff WILLIAM EDWARDS:

- 12 a. Plaintiff EDWARDS suffered a conviction for Penal Code § 415 (Disturbing the
13 Peace) on or about July 15, 2005.
- 14 b. Since that date, Plaintiff EDWARDS has been denied the right to own, possess or
15 purchase firearms.
- 16 c. Plaintiff Plaintiff EDWARDS is not prohibited under California Law from
17 possessing or purchasing firearms.
- 18 d. Penal Code § 415 [Disturbing the Peace] states:
19 Any of the following persons shall be punished by imprisonment in the
20 county jail for a period of not more than 90 days, a fine of not more than
21 four hundred dollars (\$400), or both such imprisonment and fine:
22 (1) Any person who unlawfully fights in a public place or
23 challenges another person in a public place to fight.
24 (2) Any person who maliciously and willfully disturbs another
25 person by loud and unreasonable noise.
26 (3) Any person who uses offensive words in a public place
27 which are inherently likely to provoke an immediate violent
28 reaction.
- e. California Penal Code § 415 is not a crime of domestic violence under 18 U.S.C.
§ 921 and/or 922 *et seq.*

- 1 f. California does have specific vigorously enforced Domestic Violence statutes:
- 2 i. Penal Code § 243(e).
- 3 ii. Penal Code § 273.5.
- 4 g. Plaintiff EDWARDS has been denied the right to purchase or possess firearms
- 5 solely based on the Federal Government's wrongful application and/or
- 6 interpretation of 18 U.S.C. §§ 921 and 922 *et seq.*
- 7 h. But for Defendants' wrongful interpretation of the federal laws defining domestic
- 8 violence misdemeanants, Plaintiff EDWARDS would acquire, keep and bear arms
- 9 for, among other lawful purposes, self-defense in his home.
- 10
- 11

11 **FIRST CLAIM - Declaratory Relief**

- 12 34. Paragraphs 1 through 33 are incorporated by reference as if fully set forth herein.
- 13 35. Pursuant to 18 U.S.C. § 921(a)(33) Plaintiff RICHARD ENOS has not been convicted of
- 14 a crime of domestic violence under any one of three possible theories:
- 15 a. RICHARD ENOS was not apprized of the possibility of losing his firearm rights
- 16 when he plead no contest to a misdemeanor crime of Domestic Violence back in
- 17 1991, as there was no federal or state law prohibiting Domestic Violence
- 18 misdemeanants from acquiring/possessing firearms upon conviction. Therefore
- 19 he could not make a knowing/intelligent waiver of his right to a trial.
- 20 b. RICHARD ENOS applied for and was granted a restoration of his rights under
- 21 California Penal Code § 12021(c)(3) by a Superior Court Judge in Santa Clara
- 22 County California.
- 23 c. And finally, the State of California restores the right to possess firearms for
- 24 Domestic Violence misdemeanants 10 years after conviction, by operation of law.
- 25 36. Defendants have misinterpreted 18 U.S.C. § 921(a)(33) so as to deprive Plaintiff
- 26 RICHARD ENOS of the "right to keep and bear arms" he would otherwise enjoy if the
- 27 Defendants correctly applied the law.

28 ////

SECOND CLAIM – Declaratory Relief

1
2 37. Paragraphs 1 through 33 are incorporated by reference as if fully set forth herein.

3 38. Pursuant to 18 U.S.C. § 921(a)(33) Plaintiffs JEFF BASTASINI, LOUIE MERCADO,
4 WALTER GROVES and MANUEL MONTEIRO have not been convicted of a crime of
5 domestic violence under any one of two possible theories:

6 a. JEFF BASTASINI, LOUIE MERCADO, WALTER GROVES and MANUEL
7 MONTEIRO were not apprized of the possibility of losing their firearm rights
8 when they plead no contest to a misdemeanor crime of Domestic Violence as
9 there was no federal or state law prohibiting Domestic Violence misdemeanants
10 from acquiring/possessing firearms upon conviction. Therefore they could not
11 make a knowing/intelligent waiver of their right to a trial.

12 b. And, the State of California restores the right to possess firearms for Domestic
13 Violence misdemeanants 10 years after conviction, by operation of law.

14 39. Defendants have misinterpreted 18 U.S.C. § 921(a)(33) so as to deprive Plaintiffs JEFF
15 BASTASINI, LOUIE MERCADO, WALTER GROVES and MANUEL MONTEIRO of
16 the “right to keep and bear arms” they would otherwise enjoy if the Defendants correctly
17 applied the law.

18
19 **THIRD CLAIM – Declaratory Relief**

20 40. Paragraphs 1 through 33 are incorporated by reference as if fully set forth herein.

21 41. Pursuant to 18 U.S.C. § 921(a)(33) Plaintiffs EDWARD ERIKSON and VERNON
22 NEWMAN have not been convicted of a crime of domestic violence because the State of
23 California restores the right to possess firearms for Domestic Violence misdemeanants 10
24 years after conviction, by operation of law.

25 42. Defendants have misinterpreted 18 U.S.C. § 921(a)(33) so as to deprive Plaintiffs
26 EDWARD ERIKSON and VERNON NEWMAN of the “right to keep and bear arms”
27 they would otherwise enjoy if the Defendants correctly applied the law.

28 ////

FOURTH CLAIM – Declaratory Relief

1
2 43. Paragraphs 1 through 33 are incorporated by reference as if fully set forth herein.

3 44. Pursuant to 18 U.S.C. § 921(a)(33) Plaintiff JEFF LOUGHRAN has not been convicted
4 of a crime of domestic violence under any one of three possible theories:

5 a. LOUGHRAN was not apprized of the possibility of losing his firearm rights when
6 he plead no contest to a misdemeanor crime of Domestic Violence as there was no
7 federal or state law prohibiting Domestic Violence misdemeanants from
8 acquiring/possessing firearms upon conviction. Therefore he could not make a
9 knowing/intelligent waiver of his right to a trial.

10 b. LOUGHRAN applied for and was granted an order vacating his original judgment
11 of conviction pursuant to a *writ of error coram nobis* .

12 c. And finally, the State of California restores the right to possess firearms for
13 Domestic Violence misdemeanants 10 years after conviction, by operation of law.

14 45. Defendants have misinterpreted 18 U.S.C. § 921(a)(33) so as to deprive Plaintiff
15 LOUGHRAN of the “right to keep and bear arms” he would otherwise enjoy if the
16 Defendants correctly applied the law.

17
18 **FIFTH CLAIM - Declaratory Relief**

19 46. Paragraphs 1 through 33 are incorporated by reference as if fully set forth herein.

20 47. Pursuant to 18 U.S.C. § 921(a)(33) Plaintiff EDWARDS has not been convicted of a
21 crime of domestic violence, so has to prohibit him from acquiring/possessing firearms
22 because the crime of disturbing the peace does not contain as an element of the crime:

23 a. The use or attempted use of physical force, or the threatened use of a
24 deadly weapon, committed by a current or former spouse, parent, or
25 guardian of the victim, by a person with whom the victim shares a child in
26 common, by a person who is cohabiting with or has cohabited with the
27 victim as a spouse, parent, or guardian, or by a person similarly situated
28 to a spouse, parent, or guardian of the victim.

1 48. Defendants have misinterpreted 18 U.S.C. § 921(a)(33) so as to deprive Plaintiff
2 EDWARDS of the “right to keep and bear arms” he would otherwise enjoy if the
3 Defendants correctly applied the law.
4

5 **SIXTH CLAIM – Second Amendment**

6 49. Paragraphs 1 through 48 are incorporated by reference as if fully set forth herein.

7 50. The Second Amendment to the United States Constitution provides in part that: *“the*
8 *right of the people to keep and bear Arms shall not be infringed.”*

9 51. On its face, 18 U.S.C. §§ 921(a)(33), 922(d)(9) and 922(g)(9) violates the Second
10 Amendment to the United States Constitution because it imposes a lifetime ban on the
11 exercise of a fundamental constitutional “right to keep and bear arms” after conviction of
12 a minor crime.

13 52. As applied to the facts of this case, the Defendants’ interpretations of 18 U.S.C. §§
14 921(a)(33), 922(d)(9) and 922(g)(9) violates the Second Amendment to the United States
15 Constitution because it imposes a lifetime ban on the exercise of a fundamental
16 constitutional “right to keep and bear arms” after conviction of a minor crime.
17

18 **SEVENTH CLAIM – First Amendment**

19 53. Paragraphs 1 through 48 are incorporated by reference as if fully set forth herein.

20 54. The First Amendment to the United States Constitution provides in part that: *Congress*
21 *shall make no law...abridging... the right of the people...to petition the Government for a*
22 *redress of grievances.*

23 55. On its face, 18 U.S.C. §§ 921(a)(33), 922(d)(9) and 922(g)(9) violates the rights of the
24 Plaintiffs under the First Amendment to the United States Constitution, because it
25 imposes a lifetime ban on the exercise of a fundamental constitutional right for a minor
26 crime without providing a statutory remedy to petition their government for restoration of
27 that right.

28 56. As applied to the facts of this case, Defendants’ interpretations of 18 U.S.C. §§

1 921(a)(33), 922(d)(9) and 922(g)(9) violates the rights of the Plaintiffs under the First
2 Amendment to the United States Constitution, because it imposes a lifetime ban on the
3 exercise of a fundamental constitutional “right to keep and bear arms” after conviction for
4 a minor crime without providing a statutory remedy to petition their government for
5 restoration of that right.

6
7 **EIGHTH CLAIM – Tenth Amendment**

8 57. Paragraphs 1 through 48 are incorporated by reference as if fully set forth herein.

9 58. The Tenth Amendment to the United States Constitution provides: *“The powers not
10 delegated to the Unites States by the Constitution, nor prohibited by it to the
11 States, are reserved to the States respectively, or to the people.”*

12 59. On its face, 18 U.S.C. §§ 921(a)(33), 922(d)(9) and 922(g)(9) violates the Tenth
13 Amendment to the United States Constitution because it usurps the States’ powers to
14 define and provide for the rehabilitation of minor public offenses.

15 60. As applied to the facts of this case, the Defendants’ interpretations of 18 U.S.C. §§
16 921(a)(33), 922(d)(9) and 922(g)(9) violates the Tenth Amendment to the United States
17 Constitution because it usurps the States’ powers to define and provide for the
18 rehabilitation of minor public offenses.

19 61. This usurpation of power by the federal government is directly responsible for the
20 infringement of the Plaintiffs’ fundamental “right to keep and bear arms.”

21
22 **NINTH CLAIM – Fifth Amendment “Due Process”**

23 62. Paragraphs 1 through 48 are incorporated by reference as if fully set forth herein.

24 63. The Fifth Amendment to the United States Constitution provides in part that: *“No person
25 shall... be deprived of life, liberty or property, without due process of law...”*

26 64. Part of the protection afforded Plaintiffs under the Fifth Amendment Due Process Clause
27 against the federal government is the guarantee of “equal protection” under the law.

28 65. On its face, 18 U.S.C. §§ 921(a)(33), 922(d)(9) and 922(g)(9) violates the Fifth

1 Amendment to the United States Constitution because it imposes a lifetime ban on the
2 exercise of a fundamental constitutional right for a minor crime without providing a
3 statutory remedy for restoration of that right, even though a provision exists in federal law
4 for the restoration of rights by felons. See 18 U.S.C. § 925(c).

5 66. As applied to the facts of this case, the Defendants' interpretations of 18 U.S.C. §§
6 921(a)(33), 922(d)(9) and 922(g)(9) violates the Fifth Amendment to the United States
7 Constitution because it imposes a lifetime ban on the exercise of a fundamental
8 constitutional right for a minor crime without providing a statutory remedy for restoration
9 of that right, even though a provision exists in federal law for the restoration of rights by
10 felons. See 18 U.S.C. § 925(c).

11
12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs prays that this Court will enter judgment as follows:

- 14 A. Declaratory and injunctive relief that all Plaintiffs are not subject to the prohibitions set
15 forth in 18 U.S.C. §§ 922(d)(9) and 922(g)(9).
- 16 B. Declaratory and injunctive relief that 18 U.S.C. §§ 922(d)(9) and 922(g)(9) are
17 unconstitutional on their face and as applied to all Plaintiffs.
- 18 C. Award Plaintiffs their reasonable attorney fees and costs under 28 U.S.C. § 2412, 42
19 U.S.C. § 1988 and/or 18 U.S.C. § 925A.
- 20 D. Such other and further relief as this Court deems just and proper.

21 Respectfully Submitted on January 10, 2011,

22 _____
/s/
23 Donald E.J. Kilmer, Jr., (SBN: 179986)
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