

FILED
Clerk
District Court
MAR 10 2015

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS**

for the Northern Mariana Islands
By 
(Deputy Clerk)

DAVID J. RADICH and LI-RONG RADICH,

Plaintiffs,

v.

JAMES C. DELEON GUERRERO, in his official
capacity as Commissioner of the Department of
Public Safety of the Commonwealth of the
Northern Mariana Islands,

Defendant.

Case 1:14-CV-00020

**ORDER DISMISSING COMPLAINT FOR
LACK OF STANDING AND GRANTING
LEAVE TO AMEND**

I. INTRODUCTION

Plaintiffs David and Li-Rong Radich challenge the constitutionality of the Commonwealth’s ban on handguns in the Commonwealth Weapons Control Act (“Act”). (Compl. 1, ¶¶ 1-4, ECF No. 1.) They seek to enjoin Defendant James C. Deleon Guerrero, Commissioner of the Department of Public Safety (“DPS”), from enforcing “the prohibitions on virtually all CNMI residents from obtaining handguns for self-defense purposes.” (Compl. 8, ¶ 1.) Plaintiffs have moved for summary judgment, and the issue is fully briefed. Defendant argues that the Court must dismiss this matter because Plaintiffs’ injuries cannot be redressed by a favorable decision—they lack standing. (Opp’n 4-8, ECF No. 20.) The Court agrees, and will dismiss this matter without prejudice and with leave for Plaintiffs to amend their Complaint consistent with this order.

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II. FACTS ALLEGED

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2 Plaintiffs seek legal access to handguns to protect themselves. In 2010, while David was away,
3 Li-Rong was attacked at their home. (Compl. 5, ¶ 14.) Although Li-Rong’s screams eventually drove
4 her attacker from the residence, she suffered “two broken ribs, facial contusions, and a suspected
5 broken orbital bone and eye socket.” (*Id.*) Li-Rong eventually recovered, and Plaintiffs applied for
6 weapons permits. (Compl. 5, ¶ 15.) To this day, no permit has been granted. (Compl. 5-6, ¶¶ 16-18.)

III. ARGUMENTS

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8 In their motion for summary judgment, Plaintiffs urge relief to avoid the “very real harm from
9 [their] inability to defend themselves against violence, as has already happened.” (Plaintiffs’ Memo.
10 2, ECF No. 17.) In particular, Plaintiffs seek summary judgment on Counts I and II of their Complaint.
11 Count I challenges Title 6, Section 2222(e) of the Commonwealth Code, a part of the Commonwealth
12 Weapons Control Act, which bans importing, selling, transferring, giving away, purchasing,
13 possessing, or using any handgun, because it “violates the Plaintiffs’ individual right to keep and bear
14 arms for self-defense as secured by the Second Amendment.” (Compl. 6, ¶ 20.) Count II challenges
15 Title 6, Section 2206 of the Commonwealth Code, which prohibits carrying a handgun for self-defense
16 purposes, and the requirement that an applicant demonstrate “good cause” to obtain a Weapons
17 Identification Card (“WIC”), which is required to carry any kind of firearm in the Commonwealth, for
18 the same reasons. (Compl. 6, ¶ 22.)

19 Defendant argues that Plaintiffs lack standing, because even if the Court were to strike down
20 the offending provisions of the Act, Plaintiffs’ injury would not be redressed—they would not be able
21 to obtain a handgun for self-defense without importing one from outside the Commonwealth. (Opp’n
22 6.) However, the Commonwealth bans such imports. 6 CMC § 2301. Therefore, to obtain relief,
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1 Plaintiffs would need to add a challenge to the import ban and sue the official in charge of enforcing
2 that ban. *See* 6 CMC §§ 2301(a), 2302(a) (stating that the Customs Service shall have the primary
3 responsibility for enforcing the import ban). Without taking aim at the import ban on handguns (section
4 2301) and the official in charge of enforcing it (section 2302), any ruling favorable to the Plaintiffs
5 would be a hollow one. The Court agrees.

6 IV. ANALYSIS

7 Article III of the United States Constitution limits the federal judicial power to cases or
8 controversies. U.S. Const. art. III, § 2, cl. 1. This “irreducible constitutional minimum of standing”
9 has three elements: (1) injury in fact; (2) a causal connection between the injury and the challenged
10 action; and (3) a likelihood that the injury will be redressed by a favorable decision. *Lujan v. Defenders*
11 *of Wildlife*, 504 U.S. 555, 560-61 (1992). “Redressability depends on whether the court has the ability
12 to remedy the alleged harm.” *Nuclear Info. & Res. Serv. v. Nuclear Regulatory Comm’n (“NIRS”)*,
13 457 F.3d 941, 955 (9th Cir. 2006). A court cannot redress an injury inflicted by a party not subject to
14 the lawsuit; standing requires more than partial redressability. *See Lujan*, 504 U.S. at 569 (finding
15 insufficient redressability because the district court could not bind the actions of agencies (1) not party
16 to the suit but (2) necessary to remedy the plaintiffs’ injury). In other words, if enjoining the parties to
17 the lawsuit would not avail the plaintiff, then there is an absence of redressability, and therefore
18 standing. *See NIRS*, 457 F.3d at 955 (stating that even if the Court “wiped off the books” the allegedly
19 injurious regulation, the plaintiffs nevertheless lacked standing because another agency’s identical
20 unchallenged rule would continue to apply).

21 Here, Plaintiffs allege an injury because the Commonwealth’s absolute ban on handguns
22 violates the lawful exercise of their Second Amendment right to self-defense. (*See* Plaintiffs’ Memo.
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1 2.) Commonwealth law currently prevents both the possession of handguns as well as the means of
2 obtaining them. *See* 6 CMC § 2222(e) (ban on importing, selling, transferring, giving away,
3 purchasing, possessing, or using any handgun), § 2302 (ban on bringing in or importing handguns).
4 As a result, handguns are almost entirely absent from the Commonwealth—they are certainly not
5 available for lawful purchase. Indeed, according to Defendant, DPS has not issued a single handgun
6 permit from 1983 to the present. (ECF No. 20-2.) To vindicate their Second Amendment rights,
7 therefore, Plaintiffs would need to challenge not only the statutory ban on possession, but also the ban
8 on importation. In other words, lawful possession is a *necessary* condition to exercising one’s Second
9 Amendment right, but it is not a *sufficient* one—a person still needs to obtain a gun to exercise the
10 right. (*See* Compl. 8, ¶ 1 (referring to the ban on “*obtaining*” handguns).)

11 Plaintiffs argue that the Court could grant relief on the import ban through their challenge to
12 6 CMC § 2222(e), and therefore satisfy redressability. (Reply 2.) Essentially, Plaintiffs argue that a
13 favorable decision on the challenged import ban (6 CMC § 2222(e)) would necessarily overturn the
14 unchallenged ban (6 CMC § 2301) as well. (*Id.*)

15 But whatever the merits of that argument, the Court cannot rule on the import ban unless the
16 official in charge of enforcement is named as a party. *Lujan*, 504 U.S. at 569. That is not the case in
17 this suit. Here, Defendant admitted that he “enforce[es] the CNMI’s laws, customs, practices and
18 policies,” but the plain language of the statute provides that the Customs Service—not DPS or its
19 Commissioner—has the “primary responsibility and authority to enforce” the import ban. *See* 6 CMC
20 § 2302(a). DPS “may issue, amend and repeal regulations implementing [the Commonwealth
21 Weapons Control Act]” 6 CMC § 2228, presumably including any import rules based on 6 CMC
22 § 2222(e) to prohibit handguns, but such regulations do not alter the statutory authority of Customs
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1 Service to enforce the ban independently. *See NIRS*, 457 F.3d at 955. In order for Plaintiffs to obtain
2 a handgun, they must necessarily import it or cause it to be imported into the Commonwealth. The
3 unchallenged section 2301(a) of Title 6 precludes its importation, and the Court has no way of reaching
4 that issue without the presence of the official in charge of Customs Service.


5 **V. CONCLUSION**

6 To vindicate their Second Amendment right to bear handguns in self-defense, Plaintiffs have
7 the duty to establish their legal standing. Because the current Defendant cannot provide the full remedy
8 Plaintiffs seek for their alleged constitutional injury, they must join the official in charge of enforcing
9 the handgun import ban. *See Fed. R. Civ. P. 19(a)*. Without that party, this Court lacks subject matter
10 jurisdiction. Accordingly,

- 11 1. This matter is dismissed without prejudice for lack of standing.
- 12 2. Plaintiffs' Motion for Summary Judgment (ECF No. 16) is denied as moot.
- 13 3. Defendant's Motion to Strike (ECF No. 25) is denied as moot.
- 14 4. The motion hearing set for March 12, 2015, is vacated.

15 Plaintiffs are granted leave to amend the Complaint to include the handgun import ban and
16 serve process on any necessary parties. An amended complaint must be filed with the Court no later
17 than March 24, 2015.

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19 SO ORDERED this 10th day of March, 2015.

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21 RAMONA V. MANGLONA
22 Chief Judge
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