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9 ARIE VAN NIEUWENHUYZEN,
10 THE CALGUNS FOUNDATION,
11 FIREARMS POLICY COALITION,
12 FIREARMS POLICY FOUNDATION,
13 SECOND AMENDMENT FOUNDATION, and
14 MADISON SOCIETY FOUNDATION

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **EASTERN DIVISION**

18 ARIE VAN NIEUWENHUYZEN, an
19 individual; THE CALGUNS FOUNDATION;
20 FIREARMS POLICY COALITION;
21 FIREARMS POLICY FOUNDATION;
22 SECOND AMENDMENT FOUNDATION;
23 and MADISON SOCIETY FOUNDATION,

24 Plaintiffs,

25 vs.

26 STANLEY SNIFF, in his capacity as Sheriff of
27 the County of Riverside; RIVERSIDE
28 COUNTY SHERIFF'S DEPARTMENT, a
public entity; and COUNTY OF RIVERSIDE,
CALIFORNIA,

Defendants.

Case No.

**COMPLAINT FOR VIOLATION OF CIVIL
RIGHTS**

[42 U.S.C. § 1983]

COME NOW the plaintiffs, ARIE VAN NIEUWENHUYZEN, THE CALGUNS
FOUNDATION, FIREARMS POLICY COALITION, FIREARMS POLICY FOUNDATION,
SECOND AMENDMENT FOUNDATION, and MADISON SOCIETY FOUNDATION

1 (collectively, “plaintiffs”) by and through their undersigned counsel, who hereby complain and
2 allege as follows:

3
4 **INTRODUCTION**

5 1. This is an action brought pursuant to 42 U.S.C. § 1983 for deprivation of civil
6 rights under color of law, challenging the Defendants’ County of Riverside and Sheriff Stanley
7 Sniff’s policies, customs, and practices that prohibit otherwise qualified non-U.S. citizens from
8 both applying for and obtaining a concealed carry license,¹ thus preventing plaintiff from
9 exercising his right to keep and bear arms for self-defense outside his home, in violation of the
10 Equal Protection Clause of Fourteenth Amendment, and the Second Amendment to the United
11 States Constitution.

12 2. Plaintiffs herein seek equitable, declaratory and injunctive relief challenging the
13 defendants’ policies, customs and practices that violate his constitutional rights and the law.

14
15 **JURISDICTION AND VENUE**

16 3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343,
17 2201, 2202 and 42 U.S.C. § 1983, in that this action seeks to redress the deprivation, under color
18 of the laws, statutes, ordinances, regulations, customs, and usages of the defendants as they
19 execute, administer and enforce the complained-of policies, of the rights, privileges or
20 immunities secured by the United States Constitution and by Acts of Congress.

21 4. This Court has personal jurisdiction over each of the defendants because they
22 acted under the color of laws, policies, customs, and/or practices of the County of Riverside
23 and/or within the geographic confines of the County of Riverside.

24 5. Venue is proper pursuant to 28 U.S.C. § 1391 because the defendants execute,
25 administer, and enforce the complained-of policies against plaintiffs in this District and because
26 the events and omissions giving rise to this action are harming plaintiffs in this District.

27
28 ¹Licenses to carry, applications for licenses to carry, and amendments to licenses are governed
by Cal. Penal Code § 26150, et seq.

THE PARTIES

1
2 6. Plaintiff ARIE VAN NIEUWENHUYZEN is an individual, and a lawful
3 permanent resident of the United States, living in the County of Riverside, California. Plaintiff
4 Van Nieuwenhuyzen is a law-abiding, long-time resident of Riverside since 1983, is a business
5 owner and member in good standing of the community. At all times herein, plaintiff Van
6 Nieuwenhuyzen is and has been eligible to possess firearms under all applicable state and federal
7 laws.

8 7. Plaintiff The Calguns Foundation (“CGF”) is a 501(c)(3) non-profit organization
9 incorporated under the laws of California with its principal place of business in Sacramento,
10 California. CGF is dedicated to promoting education for all stakeholders about California and
11 federal firearm laws, rights and privileges, and to defending and protecting the civil rights of
12 California gun owners. CGF represents its members and supporters, who include California
13 firearm retailers and consumers throughout the State, including Shasta County, and brings this
14 action on behalf of itself, its members, supporters who possess all the indicia of membership, and
15 similarly situated members of the public. Plaintiff Van Nieuwenhuyzen is a member of CGF.

16 8. Plaintiff Firearms Policy Coalition, Inc. (“FPC”) is a 501(c)(4) non-profit
17 organization incorporated under the laws of Delaware with its principal place of business in
18 Sacramento, California, with members residing both within and outside of this state, including in
19 Shasta County, California. FPC serves its members and the public through direct legislative
20 advocacy, grassroots advocacy, legal efforts, research, education, operation of a Hotline, and
21 other programs. The purposes of FPC include defending the United States Constitution and the
22 People’s rights, privileges, and immunities deeply rooted in the Nation’s history and tradition,
23 especially the fundamental right to keep and bear arms. FPC represents its members and
24 supporters, who include California firearm retailers and consumers, and brings this action on
25 behalf of itself, its members, supporters who possess all the indicia of membership, and similarly
26 situated members of the public. Plaintiff Van Nieuwenhuyzen is a member of FPC.

27 9. Plaintiff Firearms Policy Foundation, Inc. (“FPF”) is a 501(c)(3) non-profit
28 organization incorporated under the laws of Delaware with its principal place of business in

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1 Sacramento, California, with members residing both within and outside of this state, including in
2 Shasta County, California. FPF serves to defend and advance constitutional rights through
3 charitable purposes, with a focus on the fundamental, individual right to keep and bear arms. FPF
4 represents its members and supporters, who include California firearm retailers and consumers,
5 and brings this action on behalf of itself, its members, supporters who possess all the indicia of
6 membership, and similarly situated members of the public. Plaintiff Van Nieuwenhauzen is a
7 member of FPF.

8 10. Plaintiff Second Amendment Foundation, Inc. (“SAF”) is a 501(c)(3) non-profit
9 organization incorporated under the laws of Washington with its principal place of business in
10 Bellevue, Washington. SAF has over 650,000 members and supporters nationwide, including
11 many in California. The purposes of SAF include education, research, publishing, and legal
12 action focusing on the constitutional right to privately own and possess firearms under the
13 Second Amendment, and the consequences of gun control. SAF brings this action on behalf of
14 itself, its members, supporters who possess all the indicia of membership, and similarly situated
15 members of the public.

16 11. Plaintiff Madison Society Foundation (“MSF”) is a (501)(c)(3) non-profit
17 organization whose purpose is preserving and protecting the legal and constitutional right to keep
18 and bear arms for its members and all responsible law-abiding citizens. MSF believes that
19 individual constitutional rights should not be infringed to deny citizens their life, liberty, and
20 pursuit of happiness. MSF is headquartered in Stanislaus County, and the majority of its
21 members are California residents. The focus of MSF’s litigation efforts is challenging violations
22 of the right to keep and bear arms.

23 12. Institutional plaintiffs CGF, FPC, FPF, SAF and MSF are bringing this claim as
24 public interest organizations, whose California members similarly are or may be law-abiding
25 lawful permanent residents of the United States, in good standing, who are eligible to possess
26 firearms in this State, and who desire to obtain CCWs issued from their respective counties.

27 13. Defendant Sheriff STANLEY SNIFF (“Sheriff”) is sued herein in his capacity as
28 the Sheriff-Coroner of the County of Riverside, and, in his official capacity, is responsible for

1 executing and administering of the County’s laws, customs, practices, and policies, including the
2 promulgation and implementation of Riverside’s CCW Policy. In that capacity, defendant
3 Sheriff is presently enforcing the laws, customs, practices and policies complained of in this
4 action, and at all times has acted under color of his authority as the Sheriff.

5 14. Defendant RIVERSIDE COUNTY SHERIFF’S DEPARTMENT (“RCSD”) is a
6 public entity and law enforcement agency, organized and existing under the laws of the State of
7 California, and as a department of the County of Riverside.

8 15. Defendant COUNTY OF RIVERSIDE, CALIFORNIA (“County”) is a county
9 and political subdivision, organized and existing under the Constitution and laws of the State of
10 California, with capacity to sue and be sued. At all times, defendant County is governed by a
11 Board of Supervisors, which is responsible for supervising all County officers, including
12 defendant Sheriff, and has at all times accepted and ratified the CCW policies and procedures
13 promulgated by defendant Sheriff and enforced and implemented by defendant RCSD.

14
15 **FACTS COMMON TO ALL CLAIMS**

16 16. Originally from the Netherlands, plaintiff Van Nieuwenhuyzen, has been a
17 Lawful Permanent Resident of the City of Riverside, since 1983. Since coming to the United
18 States, Mr. Van Nieuwenhuyzen has raised an American family, owned a successful business,
19 been involved in his community, serves as a member of his church and Sunday school teacher,
20 and has obeyed all laws and customs of his adopted country and state. He has not, however,
21 obtained his United States citizenship and remains a citizen of the Netherlands. He has been
22 granted status a Lawful Permanent Resident (“LPR”) by the U.S Citizenship and Immigration
23 Service, and holds a USCIS I-551 identification, also known as a “green card.”

24 17. On or about September 21, 2018, plaintiff Van Nieuwenhuyzen exercised his
25 lawful rights guaranteed by the United State Constitution, and legally purchased Smith &
26 Wesson M&P Shield 9mm handgun, a popular firearm in common use for lawful purposes that,
27 by design, is particularly well-suited for carry on or about the person, either inside or outside the
28 home. Following the 10-day waiting period required by Cal. Pen. Code § 26815(a), plaintiff Van

1 Nieuwenhuyzen took physical possession of the handgun on October 1, 2018.

2 18. On October 9, 2018, plaintiff Van Nieuwenhuyzen inquired of the Riverside
3 County Sheriff’s Department regarding his proposed application to carry a concealed weapon
4 (“CCW permit”) after reviewing the procedures that are described on the Sheriff Department’s
5 website.² As of the time this complaint is filed, a full set of the Sheriff’s instructions and
6 application form are found at: <http://www.riversidesheriff.org/pdf/ccw/RSO-CCW-2018.pdf>, a
7 true and correct copy of which is attached hereto as **Exhibit A** (“CCW Policy”).

8 19. The Sheriff and RCSD’s CCW Policy states that any “full time resident within the
9 County of Riverside” may apply (CCW Policy, p. 7), but further requires all applicants to
10 provide a “[c]opy of your birth certificate and/or naturalization papers.” (Id.) In accordance
11 with this policy, plaintiff Van Nieuwenhuyzen was prepared to submit along with his CCW
12 application a copy of his Dutch birth certificate (to provide identity), and his I-551 (“green card”)
13 identification, to satisfy the “naturalization papers” requirement of the CCW Policy and
14 demonstrate his status as a Lawful Permanent Resident of the United States.

15 20. On October 9, 2018, plaintiff Van Nieuwenhuyzen was advised by a Deputy of
16 the RCSD, via email that he could not apply for a CCW with the County, due to the Sheriff
17 Department’s policy prohibiting CCW permits to regarding non-U.S. citizens. Specifically,
18 plaintiff was advised: “you must be a U.S. Citizen, either born in the U.S. or naturalized, in order
19 to apply for a CCW permit, with the Riverside County Sheriff’s Department.” Plaintiff was thus
20 dissuaded and discouraged from submitting his application in the first place.

21 21. On information and belief, defendants have a longstanding and current policy,
22 practice and custom of dissuading, discouraging, and preventing non-United States citizens from
23 applying for a CCW license by having a posted written policy and by telling them when they
24 inquire that only United State citizens may even apply for such permits, thereby preventing or
25 dissuading many otherwise legally eligible residents of the County of Riverside from even
26 considering the submission of CCW applications in the first place.

27 _____
28 ²See generally: <http://www.riversidesheriff.org/ccw/newapps.asp>.

CONSTITUTIONAL PROVISIONS

22. The Second Amendment provides:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

(U.S. Const. amend. II.)

23. The Second Amendment “is fully applicable against the States.” *McDonald v. City of Chicago*, 561 U.S. 3025, 130 S. Ct. 3020, 3026 (2010).

24. The Fourteenth Amendment provides in relevant part that: “Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” “It has long been settled, and it is not disputed here, that the term ‘person’ in this context encompasses lawfully admitted resident aliens as well as citizens of the United States and entitles both citizens and aliens to the equal protection of the laws of the State in which they reside.” *Graham v. Richardson*, 403 U.S. 365, 371 (1971). State action violates the Fourteenth Amendment if it separates individuals into discrete classes based on citizenship and subjects those individuals to disparate treatment. *Id.*, at 377.

STATE LAW

25. The defendants’ CCW Policy provides, in relevant part, that a “[c]opy of your birth certificate and/or naturalization papers” is needed for a CCW application. (CCW Policy, p. 7.) However, defendants employ a policy of prohibiting and preventing non-U.S. citizens, who may be Lawful Permanent Residents, from applying and/or obtaining valid CCW permits within the County.

26. Cal. Penal Code § 26175(a)(1), (g) provides in pertinent part:

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

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(g) An applicant shall not be required to complete any additional application or form for a license, or to provide any information other than that necessary to complete the standard application form described in subdivision (a), except to clarify or interpret information provided by the applicant on the standard application form.

COUNT I – VIOLATION OF EQUAL PROTECTION

(U.S. CONST. AMEND. XIV; 42 U.S.C. § 1983)

Against All Defendants

27. Plaintiffs incorporate paragraphs 1 through 26 as if fully set forth herein.

28. The citizenship requirements contained in the CCW Instructions and all other County of Riverside laws, customs, practices, and policies, which restrict lawfully-admitted aliens the rights and privileges of carrying concealed firearms based on citizenship, on their face and as applied, are unconstitutional denials of equal protection of the laws and are in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

29. Wherefore, plaintiffs seek relief under 42 U.S.C § 1983 in law, equity or other redress to remedy the deprivation of those rights, privileges, or immunities secured by the Constitution and laws guaranteeing equal protection of the laws.

COUNT II – VIOLATION OF RIGHT TO KEEP AND BEAR ARMS

(U.S. CONST. AMEND. II; 42 U.S.C. § 1983)

Against All Defendants

30. Plaintiffs incorporate paragraphs 1 through 29 as if fully set forth herein.

31. Defendants’ CCW Policy and citizenship requirements, and all other County of Riverside laws, customs, practices, and policies, which restrict lawfully admitted aliens the rights and privileges of carrying concealed firearms based on citizenship, on their face and as applied, violate the plaintiffs’ individual right to possess a firearm as secured by the Second Amendment to the United States Constitution.

32. Wherefore, plaintiffs seek relief under 42 U.S.C § 1983 in law, equity or other redress to remedy the deprivation of those rights, privileges, or immunities secured by the

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1 Constitution and laws guaranteeing the right to keep and bear arms.

2

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COUNT III – STATE PREEMPTION

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Against All Defendants

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33. Plaintiffs incorporate paragraphs 1 through 32 as if fully set forth herein.

6

34. California Constitution, Art. XI, § 7 states: “A county ... may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” If an otherwise valid law or policy conflicts with state law, it is preempted by such law and is void.

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35. The State of California has, through its statutes, chosen to occupy the entire regulatory and legislative field concerning application forms and policies regarding the application and issuance of CCWs within the State except where discretion was expressly delegated, i.e., the licensing authority’s determinations of “good cause” (Pen. Code § 26150(a)(2)) and “good moral character” (§ 26150(a)(1)), as well as the local training standards for the course of instruction that an applicant must take after a licensing authority approves an applicant’s “good cause” (Pen. Code §§ 26165, 26202).

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36. The U.S. citizenship requirements contained in the defendants’ CCW Policy, practices, and customs are additional requirements not authorized by state law, and preempted by Cal. Penal Code §§ 26150(a)(3) and 26175(a)(1), (g).

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10

COUNT IV – DECLARATORY RELIEF

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(28 U.S.C. § 2201 et seq.)

12

Against All Defendants

13

37. Plaintiffs incorporate paragraphs 1 through 36 as if fully set forth herein.

14

38. A current and actual controversy exists as to whether the citizenship requirements contained in the defendants’ CCW Policy are unconstitutional, violate equal protection of the laws, or are otherwise preempted by state law. Whether or not plaintiff Van Nieuwenhuyzen is granted some or all of the remedies requested herein, a declaration from this court, having the

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1 force and effect of a final judgment, would clarify and settle the issues in dispute, pursuant to 28
2 U.S.C. § 2201.

3 39. Further necessary or proper relief based upon such a declaration and judgment
4 may also be granted, in accordance with the declaration made by this court, pursuant to 28
5 U.S.C. § 2202.

6 40. Wherefore, plaintiffs seek a judicial declaration under the Declaratory Judgment
7 Act that the United States citizenship requirements contained in defendants' CCW Policy are
8 unconstitutional, violate equal protection of the laws, or are preempted by state law.

9
10 **COUNT V – INJUNCTIVE RELIEF**

11 **Against All Defendants**

12 41. Plaintiffs incorporate paragraphs 1 through 40 as if fully set forth herein.

13 42. In the absence of a prohibitory injunction, the citizenship requirements of
14 defendants' CCW Policy would continue to be enforced and would prevent plaintiff Van
15 Nieuwenhuyzen, and the institutional plaintiffs' lawfully admitted Lawful Permanent Resident
16 members residing in the County of Riverside, from (1) successfully obtaining a concealed carry
17 permit and/or (2) legally carrying a handgun in a concealed manner that any otherwise-qualified
18 citizens may possess and carry concealed in public.

19 43. As the defendants' CCW Policy constitutes deprivation of substantial
20 constitutional rights, plaintiffs and their members would continue to suffer irreparable injury if
21 the court does not issue a prohibitory injunction preventing the citizenship requirement of
22 defendants' CCW Policy from being enforced.

23 44. There is no adequate remedy at law because only a declaration and injunction, as
24 opposed to monetary damages, would allow plaintiff Van Nieuwenhuyzen, and the institutional
25 plaintiffs' lawfully admitted lawful permanent resident members residing in the County of
26 Riverside, the opportunity legally to obtain a CCW and carry a handgun in a concealed manner
27 for self-defense purposes outside of the home.

28 45. Wherefore, plaintiffs seek injunctive relief to enjoin, prevent and restrain

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1 defendants from continuing to implement, enforce or otherwise require adherence to such
2 policies that are unconstitutional, violate equal protection of the laws, infringe upon the right to
3 keep and bear arms, or are otherwise preempted by state law.

4
5 **PRAYER FOR RELIEF**

6 WHEREFORE, plaintiffs pray for relief as follows:

7 1. For declaratory judgment in plaintiffs’ favor, and against defendants, that the
8 defendants’ CCW Policy, and all other County of Riverside laws, customs, practices, or policies
9 which restrict lawfully admitted aliens’ firearms rights and privileges based on United States
10 citizenship, are null and void because they (i) violate the equal protection of the laws guaranteed
11 by the Fourteenth Amendment to the United State Constitution; and (ii) infringe on the right of
12 the people to keep and bear arms in violation of the Second Amendment to the United States
13 Constitution;

14 2. For judgment to be issued in plaintiffs’ favor, issuing preliminary and permanent
15 injunctions enjoining defendants Sheriff Stanley Sniff, Riverside County Sheriff’s Department
16 and the County of Riverside, California from enforcing the United States citizenship requirement
17 of the CCW Policy against the plaintiffs and/or their members;

18 3. For an award of plaintiffs’ reasonable attorney’s fees and costs, pursuant to 42
19 U.S.C. § 1988; and

20 4. For other such relief, in law and equity, as the court deems to be proper and just.

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22 Dated: October 19, 2018

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23
24 /s/ George M. Lee
George M. Lee

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26 Attorneys for Plaintiffs