

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RANDY DONK,)
 GUN OWNERS OF AMERICA, INC.,)
 and GUN OWNERS FOUNDATION,)
)
 Plaintiffs,)
)
 v.)
)
 MICHELLE LUJAN GRISHAM, in her)
 official capacity as the Governor of)
 New Mexico, PATRICK M. ALLEN, in)
 his official capacity as the Cabinet Secretary)
 of the New Mexico Department of Health,)
 JASON R. BOWIE, in his official capacity)
 as the Cabinet Secretary of the New Mexico)
 Department of Public Safety, and W. TROY)
 WEISLER, in his official capacity as the)
 Chief of the New Mexico State Police,)
)
 Defendants.)
 _____)

Civil Action No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COME NOW Plaintiffs Randy Donk, Gun Owners of America, Inc., and Gun Owners Foundation, by and through undersigned counsel, and allege as follows:

1. Purporting to respond to recently declared “statewide public health emergencies” of “gun violence and drug abuse,” New Mexico Governor Michelle Lujan Grisham and Department of Health Secretary Patrick M. Allen (“Defendants”) have asserted the unilateral power to suspend constitutional rights and impose what is essentially martial law. To that end, they have promulgated an executive order signed by the Governor on September 7, 2023, and thereafter a “public health emergency order” signed by the Secretary on September 8, 2023, that flatly eliminate the right to “bear arms” in public in various “cities or counties” within the State that meet a convoluted, multi-part test for levels of criminal activity.

2. Aware that local authorities have publicly announced that they are unwilling to enforce this clearly unconstitutional edict, and have staunchly refused to participate in Defendants' scheme to deprive their constituents of their constitutional rights, Defendants have ordered the New Mexico State Police to act as a private army of stormtroopers to be sent *en masse* to enforce Defendants' open and notorious subversion of constitutional rights.

3. There is no defense to Defendants' actions — legal, moral, or otherwise. Their actions clearly and unambiguously violate the Second Amendment's protection of the right to "bear arms" that "shall not be infringed," and deprive law-abiding gun owners of their only means of self-defense from criminal attack while in public. For that reason, this Court must end this unconstitutional charade before the train even leaves the station.

4. To that end, Plaintiffs request an immediate Temporary Restraining Order be issued, on an emergency basis, followed by a preliminary and then permanent injunction, and also seek declaratory and other relief. Moreover, because there is literally nothing that Defendants can offer as a legal defense to their blatant and egregious constitutional violations, Plaintiffs ask that a restraining order be issued *ex parte*, without any opportunity for Defendants to respond or be heard.

I. PARTIES

5. Plaintiff Randy Donk is a natural person, a citizen of the United States and of the State of New Mexico, and resides in Bernalillo County, New Mexico. He is a law-abiding person who currently possesses a valid New Mexico Concealed Handgun License ("CHL"). Plaintiff Donk carries a lawfully owned firearm for self-defense in public, both concealed and at times openly, on a daily basis. Plaintiff Donk's daily activities take him throughout both Bernalillo County and the City of Albuquerque. Plaintiff Donk will continue carrying his firearm in public throughout the City of Albuquerque and Bernalillo County, in spite of Defendants' unconstitutional edicts, placing

him at great risk of irreparable harm and even potential arrest and criminal prosecution (not to mention loss of his New Mexico CHL, seizure of his firearm, and further infringement of his right to “bear arms”). *See* Exhibit 3.

6. Plaintiff Gun Owners of America, Inc. (“GOA”) is a California non-stock corporation with its principal place of business at 8001 Forbes Place, Springfield, VA 22151. GOA is organized and operated as a non-profit membership organization that is exempt from federal income taxes under Section 501(c)(4) of the U.S. Internal Revenue Code. GOA was formed in 1976 to preserve and defend the Second Amendment rights of gun owners. GOA has more than 2 million members and supporters across the country, including residents of the District of New Mexico and throughout the City of Albuquerque and Bernalillo County, many of whom lawfully carry firearms on a daily basis. Many of these gun owners, like the individual Plaintiff, will be irreparably harmed by Defendants’ blatantly unconstitutional attempt to unilaterally suspend the Second Amendment in public. *See* Declaration of Erich Pratt, Exhibit 4.

7. Plaintiff Gun Owners Foundation (“GOF”) is a Virginia non-stock corporation with its principal place of business at 8001 Forbes Place, Springfield, VA 22151. GOF was formed in 1983 and is organized and operated as a non-profit legal defense and educational foundation that is exempt from federal income taxes under Section 501(c)(3) of the U.S. Internal Revenue Code. GOF is supported by gun owners across the country and within this district who, like the individual Plaintiff, will be irreparably harmed by Defendants’ “Public Health Order.”

8. Together, GOA and GOF represent the interests of many members and supporters who are being irreparably harmed by Defendants’ unconstitutional firearms carry ban. Moreover, (a) GOA and GOF’s affected members and supporters each would have standing to sue individually to challenge Defendants’ orders; (b) the interests GOA and GOF seek to protect are germane to their

organizational purposes; and (c) neither the claims asserted, nor the relief requested, require the participation of individual members and supporters in this lawsuit.

9. Defendant Michelle Lujan Grisham is sued in her official capacity as the Governor of New Mexico. Article V, Section 4 of the New Mexico Constitution vests Defendant Lujan Grisham with the state's "supreme executive power" and tasks her with taking care that the laws be faithfully executed. Defendant Lujan Grisham oversees and exercises authority over the other Defendants in this action, with the unilateral power to remove and replace those who do not adequately implement her unconstitutional agenda. Defendant Lujan Grisham may be served at the New Mexico State Capitol, 4th Floor, Room 400, 490 Old Santa Fe Trail, Santa Fe, NM 87501.

10. Defendant Patrick M. Allen is sued in his official capacity as the Cabinet Secretary of the New Mexico Department of Health. Appointed by the Governor and serving at her pleasure, Defendant Allen oversees the New Mexico public health system and its emergency response services and has the authority to issue public health emergency orders. Defendant Allen may be served at the New Mexico Department of Health, Harold Runnels Building, 1190 South St. Francis Drive, Santa Fe, NM 87505.

11. Defendant Jason R. Bowie is sued in his official capacity as the Cabinet Secretary of the New Mexico Department of Public Safety. Appointed by the Governor and serving at her pleasure, Defendant Bowie oversees statewide law enforcement activities, including those of the New Mexico State Police. Defendant Bowie may be served at the New Mexico Department of Public Safety, 4491 Cerrillos Road, Santa Fe, NM 87507.

12. Defendant W. Troy Weisler is sued in his official capacity as the Chief of the New Mexico State Police, a division of the Department of Public Safety. As State Police Chief, Defendant Weisler exercises, delegates, or supervises all the powers and duties of the New Mexico State

Police, the body responsible for executing and enforcing New Mexico’s laws and regulations governing the carrying of firearms in public, and the entity explicitly tasked by the Governor and Secretary Allen with enforcing the unlawful actions challenged here. Defendant Weisler may be served at the New Mexico Department of Public Safety, 4491 Cerrillos Road, Santa Fe, NM 87507.

II. JURISDICTION AND VENUE

13. This Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, 1651, 2201, 2202 and 42 U.S.C. §§ 1983 and 1988.

14. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

III. STATEMENT OF FACTS

a. **Defendants’ Unilateral Suspension of the United States Constitution.**

15. On September 7, 2023, New Mexico Governor Michelle Lujan Grisham signed into law Executive Order 2023-130 (“EO”), entitled “Declaring State of Public Health Emergency Due to Gun Violence.”¹ Exhibit 1.

16. First, the EO makes a series of “whereas” allegations about “gun violence” and “gun deaths” within the State of New Mexico. *Id.* at 1.

17. Second, the EO declares that this state of events “constitutes a statewide public health emergency of unknown duration” and also “constitutes a manmade disaster threatening widespread physical or economic harm that is beyond local control.” *Id.* at 2.

18. Third, the EO orders the Department of Public Health, Department of Homeland Security and Emergency Management, and Department of Public Safety to “provide an effective and coordinated response” to the purported emergency. *Id.*

¹ <https://www.governor.state.nm.us/wp-content/uploads/2023/09/Executive-Order-2023-130.pdf>.

19. Fourth, the EO sets aside \$750,000 to be “expended for the purpose of complying with this Order.” *Id.*

20. Although the EO claims that this alleged public health emergency is “of unknown duration,” the EO is effective until October 6, 2023. *Id.* at 3.

21. The next day on September 8, 2023, acting pursuant to the mandates set forth by the EO, New Mexico Department of Health Cabinet Secretary Patrick M. Allen issued a “Public Health Emergency Order Imposing Temporary Firearm Restrictions, Drug Monitoring and Other Public Safety Measures” (“PHO”).² Exhibit 2.

22. The PHO references the purported “gun violence” emergency in the EO, together with the “drug abuse” emergency announced in Executive Order 2023-132 (signed by the Governor on the same day as the EO), alleging that not only “gun violence” but also “drug abuse currently constitute statewide public health emergencies.” *Id.* at 1.

23. Claiming to “possess legal authority” pursuant to a series of New Mexico statutes, along with “inherent constitutional police powers,” the PHO announces that Second Amendment rights will be suspended “for the duration of the public health emergencies declared in Executive Orders 2023-130 and 2023-132 and any subsequent renewals of those public health emergency declarations.” *Id.* at 1, 3.

24. Specifically, and as challenged here, the PHO declares “temporary firearm restrictions,” namely that “no person ... shall possess a firearm ... either openly or concealed, within [certain] cities or counties.” *Id.* at 1.

25. Such restricted localities are to be determined by a two-part test in the PHO, if they (i) “averag[e] 1,000 or more violent crimes per 100,000 residents per year since 2021,” and (ii) “more

² <https://tinyurl.com/ycyyk6mz>.

than 90 firearm-related emergency department visits per 100,000 residents from July 2022 to June 2023 according to the New Mexico Department of Public Health.” *Id.*

26. Although the Department of Public Health does not appear to have released data on emergency room visits such that an ordinary person could determine which localities are covered by the vague terms of the PHO, the Governor clarified that, “[a]s of Friday, that meant the order only applied to the city of Albuquerque and Bernalillo County.”³

27. The PHO creates certain limited exceptions to its broad firearms ban. First, the PHO’s gun ban does not apply to “a law enforcement officer or a licensed security officer.” *Id.* at 1. Second, the PHO’s gun ban does not apply “on private property owned or immediately controlled by the person” with the firearm or “on private property that is not open to the public” (such as private homes). *Id.* at 2-3. Third, the PHO’s gun ban does not apply at gun stores, gunsmiths, shooting ranges and similar events, or if traveling “to or from” a permissible location “provided that the firearm is in a locked container and locked with a firearm safety device that renders the firearm inoperable” and thus inaccessible for self-defense. *Id.* at 2.

28. Then, although already seemingly prohibited by its broad gun ban, the PHO bans firearms specifically “on state property, public schools, and public parks.” *Id.* at 3.

29. The PHO provides that violations thereof “may be subject to civil administrative penalties available at law.” *Id.* at 3. Such penalties, reportedly, “could include the loss of a permit to carry a concealed firearm.”⁴ However, when asked “how the order will be enforced and what the penalty will be for violating it,” Governor Lujan Grisham replied additionally that “we’re likely dealing with misdemeanors.”⁵

³ <https://tinyurl.com/mrx5d8dy>.

⁴ *Supra* note 3.

⁵ *Supra* note 3.

30. With respect to *who* will enforce the PHO, local law enforcement has flatly refused to enforce Defendants' orders.⁶ For example, the Albuquerque Mayor's Office stated that "APD is not responsible for enforcing the governor's ban."⁷ Similarly, Bernalillo County Sheriff John Allen stated that "the temporary ban challenges the foundation of our constitution, which I swore an oath to uphold."⁸ Likewise, "Albuquerque police Chief Harold Medina said he won't enforce it."⁹

31. Unfortunately, the fidelity of local officials to the Constitution is apparently no impediment to Defendants' plan, as the PHO seemingly anticipates such rebellion.

32. Indeed, the Governor stated openly at her September 8, 2023 press conference that "[w]hat I have in the public health order is not agreed to by every member sitting at this table. Nor was it developed with all of their expertise at the front."¹⁰

33. Thus, the PHO instructs that "[t]he Department of Public Safety shall dispatch additional officers ... to Bernalillo County." *Id.* at 2. Likewise, the Governor reportedly has claimed that these State Police officers will "enforce the order ... because they're required to carry out executive orders."¹¹ In other words, the Governor stands ready to send in her private army of stormtroopers to suppress constitutional rights and round up gun owners who dare to disobey her unilateral edicts.

34. If Defendants' contempt for the Constitution was not clear on the face of the EO and PHO, Governor Lujan Grisham's further comments provide all the confirmation this Court needs. At the press conference announcing the Governor's suspension of the Second Amendment and her

⁶ Even anti-gun activist David Hogg thinks Defendants' unilateral suspension of the Constitution is a bridge too far. See <https://tinyurl.com/2t8z2ubx> ("I support gun safety but there is no such thing as a state public health emergency exception to the U.S. Constitution.").

⁷ <https://tinyurl.com/smfhcs83>.

⁸ <https://tinyurl.com/bdenmx7r>; see also <https://tinyurl.com/bdxrkh67>.

⁹ <https://tinyurl.com/bdenmx7r>.

¹⁰ <https://www.youtube.com/watch?v=S9oLOubipXc>, at 2:30.

¹¹ *Supra* note 3.

usurpation of queenlike powers, she stated, “if there’s an emergency, and I’ve declared an emergency for a temporary amount of time, I can invoke additional powers. *No constitutional right, in my view, including my oath, is intended to be absolute.*”¹²

35. As incredible proof of these executive actions’ pretextual nature, the Governor even admitted that “*she doesn’t expect criminals to follow the order.*”¹³ And yet the Governor also knows that “[r]esponsible gun owners are certainly not our problem — have never been our problem,” because *she said so herself*.¹⁴

36. Of course, the Governor’s paradoxical statements beg the question — if law-abiding gun owners are not the problem, and criminals carrying guns will not obey the PHO, then what is the purpose of the Governor’s actions? The answer is evident. The EO and PHO serve no purpose other than to implement a radical political agenda to punish law-abiding gun owners for exercising their enumerated rights to carry arms in public for self-defense.

37. Defendants have presented a credible threat of enforcement of their unconstitutional mandates against Plaintiffs. Not only has the Governor specifically threatened criminal sanction but also her underlings have put plans in place to send State Police officers into Bernalillo County and the City of Albuquerque to enforce her edicts.

b. The Second Amendment.

38. The Second Amendment to the United States Constitution 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.”

¹² *Supra* note 10, at 32:03 (emphasis added).

¹³ *Supra* note 7 (emphasis added).

¹⁴ *Supra* note 3.

39. In its landmark 2008 decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court rejected the nearly uniform opinions reached by the courts of appeals, which for years had claimed that the Second Amendment protects only a communal right of a state to maintain an organized militia. *Id.* at 581. Setting the record straight, the *Heller* Court explained that the Second Amendment recognizes, enumerates, and guarantees to **individuals** the preexisting right to keep **and carry arms for self-defense** and defense of others in the event of a violent confrontation. *Id.* at 592.

40. Then, in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Court explained that the Second Amendment is fully applicable to the states through operation of the Fourteenth Amendment. *Id.* at 791.

41. In *Caetano v. Massachusetts*, 577 U.S. 411 (2016), the Court reaffirmed its conclusion in *Heller* that “the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding,” and that this “Second Amendment right is fully applicable to the States.” *Id.* at 411.

42. Finally, as the Court has now recently explained in *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111 (2022), the Second and Fourteenth Amendments together guarantee individual Americans not only the right to “keep” firearms in their homes but also **the right to “bear” firearms in public for self-defense**. *Id.* at 2122.

43. Importantly, *Bruen* categorically rejected the judicially created “two-step” interest balancing test that had run rampant through the lower courts after *Heller*, noting that, “[d]espite the popularity of this two-step approach, it is one step too many.” *Id.* at 2127. For that reason, *Bruen* explicitly rejected the sort of public-safety justifications presented in the EO and PHO, explaining that they have no role to play in the analysis of the scope of Second Amendment rights.

Id. at 2126 n.3 (“the right to keep and bear arms ... is not the only constitutional right that has controversial public safety implications.”).

44. In other words, according to the Second Amendment’s text, and as elucidated by the Court in *Bruen*, if a member of “the people” (here, Plaintiffs) wishes to “keep” or “bear” (here, carry in public for self-defense) a protected “arm” (here, a handgun), then the ability to do so “shall not be infringed.”¹⁵ Period. There are no “ifs, ands, or buts,” and it does not matter (even a little bit) how important, significant, compelling, or overriding the government’s ostensible justification for, or interest in, infringing the right may be. It does not matter whether a government restriction “minimally” versus “severely” burdens (infringes) upon the Second Amendment. There is no “balancing” or “multi-step” test, and there are no relevant statistical studies to be consulted. There are no sociological arguments to be considered. The historically ubiquitous problems of crime do not affect the equation and do not alter the Second Amendment’s “unqualified command” as described by *Bruen*. “The very enumeration of the right takes out of the hands of government — even the Third Branch of Government — the power to decide on a case-by-case basis whether the right is *really worth* insisting upon.” *Heller*, 554 U.S. at 634.

45. Defendants’ actions through the EO and PHO serve completely to eliminate this sacred, enumerated individual right. For that reason, in this case **it is entirely unnecessary to proceed beyond the plain text of the Second Amendment and the direct holdings of *Heller* and *Bruen*.** Defendants have eliminated the right to bear arms for self-defense in public in Albuquerque and

¹⁵ See *Bruen*, 142 S. Ct. at 2134 (citation omitted) (“It is undisputed that petitioners Koch and Nash — two ordinary, law-abiding, adult citizens — are part of ‘the people’ whom the Second Amendment protects. Nor does any party dispute that handguns are weapons ‘in common use’ today for self-defense.” ... We have little difficulty concluding that ... the plain text of the Second Amendment protects ... carrying handguns publicly for self-defense. ... This definition of ‘bear’ naturally encompasses public carry.”).

Bernalillo County, and thus they have plainly infringed a right that “shall not be infringed.” Full stop.

46. However, additionally and alternatively, *Bruen* teaches that “[t]o justify [a] regulation, the government may not simply posit that the regulation promotes an important interest” (such as the “gun violence” and “drug abuse” motivations espoused here). 142 S. Ct. at 2126. “Rather, the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’” *Id.* at 2126.

47. In reviewing the historical evidence, the *Bruen* Court cabined review of relevant history to a narrow time period, because “not all history is created equal,” *id.* at 2136, focusing on the period around the ratification of the Second Amendment and perhaps the Fourteenth Amendment (but noting that “post-ratification” interpretations “cannot overcome or alter that text” and that “we have generally assumed that the scope of the protection applicable to the Federal Government and States is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791”). *Id.* at 2137; *see also id.* at 2119-37 (discussing the lack of relevant historical prohibitions on carrying firearms in public).

48. With respect to whether post-Founding historical sources have any role at all to play in the analysis, the Supreme Court technically left the question open, finding it unnecessary to its decision in *Bruen*. 142 S. Ct. at 2138. Nevertheless, as the Court has repeatedly made clear, even prior to *Bruen*, Reconstruction-era historical sources are to be used (at most) only as confirmation of a historical tradition that was already in existence during the Founding. For example, in *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246 (2020), the Court rejected the fact

that “more than 30 States” had enacted a certain type of legislation in the mid-to-late 19th century, explaining that even such a pattern “cannot by itself establish an early American tradition.” *Id.* at 2258-59; *see also Bruen*, 142 S. Ct. at 2137 (using 1800s sources only “as mere confirmation of what the Court thought already had been established”); *id.* at 2163 (Barrett, J., concurring) (“[T]oday’s decision should not be understood to endorse freewheeling reliance on historical practice from the mid-to-late 19th century to establish the original meaning of the Bill of Rights. On the contrary, the Court is careful to caution ‘against giving postenactment history more weight than it can rightly bear.’”); *Ramos v. Louisiana*, 140 S. Ct. 1390, 1396 (2020).

49. The only appropriate inquiry then, according to *Bruen*, is what the “public understanding of the right to keep and bear arms” was during the ratification of the Second Amendment in 1791, and *perhaps* during ratification of the Fourteenth Amendment in 1868. *Bruen*, 142 S. Ct. at 2138.

50. Simply put, there is absolutely no broad and enduring historical tradition of entirely banning the carrying of arms in public in an entire city or county. But one not need take Plaintiffs’ word for it.

51. There is no need for this Court to investigate whether there were any isolated Founding-era restrictions on firearms carry, much less whether any such post-Ratification era laws existed in sufficient duration, quantity, and breadth to establish a “historical tradition.” *Bruen* has already performed the analysis, which is complete, and binding on this Court as to the question presented here. As the Court in *Bruen* explained, “there is little evidence of an early American practice of regulating public carry by the general public.” *Id.* at 2142.

52. As for Ratification-era laws, *Bruen* recounted that, “[i]n the early to mid-19th century, some States began enacting laws that proscribed the concealed carry of pistols and other small weapons.” *Id.* at 2146. But far from supporting Defendants’ actions here, the Court explained that

“these antebellum state-court decisions” in fact “evinced a consensus view that States could not altogether prohibit the public carry of ‘arms’ protected by the Second Amendment.” *Id.* at 2147 (emphasis added). Indeed, the Court concluded that “history reveals a consensus that States could not ban public carry altogether” (*id.* at 2146), as Defendants have done here.

53. Finally, *Bruen* explicitly warned against using its “sensitive places” doctrine to “effectively declare” entire jurisdictions off-limits for firearms carry. *Id.* at 2118. Yet that is precisely what Defendants have done here, declaring an entire city and county almost entirely off-limits to the public carry of firearms.¹⁶

54. As the Court succinctly summarized, “American governments simply have not broadly prohibited the public carry of commonly used firearms for personal defense.” *Id.* at 2156.

55. **That single statement is enough to resolve this case.**

56. Defendants’ actions are definitively foreclosed not only by plain text of the Second Amendment and the four corners of the *Bruen* opinion, but also by any required historical analysis that the Court already has performed and decided against Defendants.

57. The only step that remains, then, is to enjoin and restrain Defendants’ patently unconstitutional actions and edicts.

COUNT I

¹⁶ A number of other jurisdictions already attempted post-*Bruen* adoptions of broad restrictions on public carry in so-called “sensitive places” in name only. However, district courts have almost uniformly ruled these locational restrictions unconstitutional. See *Hardaway v. Nigrelli*, No. 22-CV-771 (JLS), 2022 U.S. Dist. LEXIS 200813 (W.D.N.Y. Nov. 3, 2022); *Antonyuk v. Hochul*, No. 1:22-CV-0986 (GTS/CFH), 2022 U.S. Dist. LEXIS 201944 (N.D.N.Y. Nov. 7, 2022); *Christian v. Nigrelli*, No. 22-CV-695 (JLS), 2022 U.S. Dist. LEXIS 211652 (W.D.N.Y. Nov. 22, 2022); *Spencer v. Nigrelli*, No. 22-CV-6486 (JLS), 2022 U.S. Dist. LEXIS 233341 (W.D.N.Y. Dec. 29, 2022); *Koons v. Platkin*, No. CV 22-7463 (RMB/AMD), 2023 U.S. Dist. LEXIS 85235 (D.N.J. May 16, 2023); *Wolford v. Lopez*, No. CV 23-00265 LEK-WRP, 2023 U.S. Dist. LEXIS 138190 (D. Haw. Aug. 8, 2023). Defendants’ actions here do not even pretend to be under the guise of banning the carry of firearms at “sensitive places,” the only places carry may be banned under *Bruen*. Rather, Defendants seek a naked repeal of Second Amendment rights in the city and county.

U.S. CONST. AMENDS. II, XIV, and 42 U.S.C. § 1983

58. Plaintiffs re-allege the preceding paragraphs as if set forth in full.

59. As quoted above, 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.”

60. The Second Amendment is applicable to the states through operation of the Fourteenth Amendment.

61. The challenged Orders violate “the right of the people to ... bear arms” protected by the Second Amendment.

62. As the Supreme Court has explained, that protection includes the right of law-abiding Americans to carry handguns in public for self-defense. The challenged Orders eliminate the ability to engage in that protected conduct.

63. Additionally, the challenged Orders are without historical precedent, as there is no broad and enduring historical tradition – from any time period – completely banning the carrying of firearms in public.

64. For each of these reasons, the challenged Orders violate rights that the Second Amendment states “shall not be infringed.”

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that relief be granted, and judgment be entered in their favor and against Defendants as follows:

1. An order temporarily restraining, and/or preliminarily and permanently enjoining Defendants, their officers, agents, servants, employees, and all persons in active concert or

participation with them who receive actual notice of the injunction, from enforcing the PHO and EO (“the Orders”);

2. An order declaring that the Orders are unenforceable, unconstitutional, and violative of the Second and Fourteenth Amendments to the United States Constitution;

3. Costs of suit, including attorney fees and costs pursuant to 42 U.S.C. § 1988;

4. Nominal damages;

5. Such other further relief as is necessary to effectuate the Court’s judgment or that the Court otherwise deems just and appropriate.

Dated: September 9, 2023

/s/ Mark J. Caruso
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Respectfully submitted,

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*Application for admission pending

Attorneys for Plaintiffs



State of New Mexico

Michelle Lujan Grisham
Governor

EXECUTIVE ORDER 2023-130

DECLARING STATE OF PUBLIC HEALTH EMERGENCY DUE TO GUN VIOLENCE

WHEREAS, New Mexico consistently has some of the highest rates of gun violence in the nation;

WHEREAS, the rate of gun deaths in New Mexico increased 43% from 2009 to 2018, compared to an 18% increase over this same time period nationwide;

WHEREAS, guns are the leading cause of death among children and teens in New Mexico, and have led to the deaths of a thirteen-year-old girl on July 28, a five-year-old girl on August 14, and an eleven-year-old boy on September 6;

WHEREAS, New Mexico has recently experienced an increasing amount of mass shootings, including mass shootings in Farmington and Red River this year;

WHEREAS, these gun-related deaths and injuries have resulted in devastating physical and emotional consequences for individuals, families, and communities throughout the State;

WHEREAS, the impact of gun violence extends beyond physical injuries and fatalities—causing emotional trauma, economic burdens, and long-lasting consequences for those affected individuals and their families;

WHEREAS, the increasing number of gunshot victims strains our already over-burdened healthcare system and places undue pressure on medical professionals and resources;

Exhibit 1

WHEREAS, after consulting with the Secretary of the Department of Health, I have determined that the foregoing situation constitutes a statewide public health emergency of unknown duration, as defined by the Public Health Emergency Response Act; and

WHEREAS, the foregoing situation also constitutes a man-made disaster causing or threatening widespread physical or economic harm that is beyond local control and requiring the resources of the State pursuant to the All Hazard Emergency Management Act.

NOW, THEREFORE, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by the authority vested in me by the Constitution and laws of the State of New Mexico, do hereby **DECLARE** that a state of public emergency exists throughout the State due to gun violence and **ORDER** and **DIRECT** as follows:

1. The Department of Public Health, Department of Homeland Security and Emergency Management, and Department of Public Safety shall immediately begin collaborating with my Office to provide an effective and coordinated response to this public health emergency.

2. The Department of Finance and Administration shall make available emergency financial resources in an amount not to exceed seven hundred fifty thousand dollars (\$750,000.00) to the to the Department of Health, Department of Homeland Security and Emergency Management, and/or Department of Public Safety, in accordance with NMSA 1978, Sections 12-11-23 to -25. Funds shall be expended for the purpose of complying with this Order and shall be expended specifically to avoid and minimize economic or physical harm and to protect the public health, safety, and welfare. Funds shall be paid out upon warrants drawn by the Secretary of Finance and Administration upon vouchers approved by the Governor or an agent or agency designated by her for that purpose.

3. All mayors, sheriffs, and members of governing bodies of municipalities or counties are encouraged to request, if necessary, an emergency proclamation and implementation of temporary additional restrictions to address this public health emergency pursuant to the Riot Control Act.


4. All political subdivisions of the State shall comply with and enforce all directives issued pursuant to this Order.

I FURTHER ORDER and DIRECT as follows:

1. This Order supersedes any previous orders, proclamations, or directives to the extent they are in conflict.

2. This Order shall take effect immediately and shall remain in effect until October 6, 2023.


ATTEST:



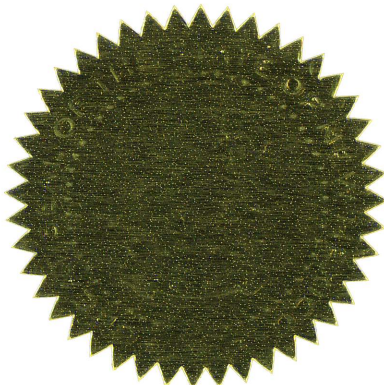
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE
THIS 7TH DAY OF SEPTEMBER 2023

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO



MICHELLE LUJAN GRISHAM
GOVERNOR





MICHELLE LUJAN GRISHAM
Governor

PATRICK M. ALLEN
Cabinet Secretary

**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT OF HEALTH
SECRETARY PATRICK M. ALLEN**

September 8, 2023

**Public Health Emergency Order Imposing Temporary Firearm
Restrictions, Drug Monitoring and Other Public Safety Measures**

WHEREAS, for the reasons stated in Governor Michelle Lujan Grisham's Executive Orders 2023-130 and 2023-132, gun violence and drug abuse currently constitute statewide public health emergencies, as defined in the Public Health Emergency Response Act;

WHEREAS, pursuant to those Executive Orders, I have begun collaborating with the New Mexico Department of Homeland Security and Emergency Management, the New Mexico Department of Public Safety, and the Governor's Office to provide an effective and coordinated response to these public health emergencies;

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government to preserve and promote public health and safety, to maintain and enforce rules for the control of a condition of public health importance; and

WHEREAS, temporary firearm restrictions, drug monitoring, and other public safety measures are necessary to address the current public health emergencies.

NOW, THEREFORE, I, Patrick M. Allen, Secretary of the New Mexico Department of Health, in accordance with authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of emergency powers under the All Hazard Emergency Management Act, do hereby **DECLARE** that gun violence and drug use constitute conditions of public health importance, as defined in NMSA 1978, Section 24-1-2(A), and hereby **ORDER** and **DIRECT** as follows:

(1) No person, other than a law enforcement officer or licensed security officer, shall possess a firearm, as defined in NMSA 1978, Section 30-7-4.1, either openly or concealed, within cities or counties averaging 1,000 or more violent crimes per 100,000 residents per year since 2021 according to Federal Bureau of Investigation's Uniform Crime Reporting Program AND more than 90 firearm-related emergency department visits per 100,000 residents from July 2022 to June 2023 according to the New Mexico Department of Public Health, except:

A. On private property owned or immediately controlled by the person;

Exhibit 2

OFFICE OF THE SECRETARY

1190 St. Francis Dr., Suite N4100 • P.O. Box 26110 • Santa Fe, New Mexico • 87502
(505) 827-2613 • FAX: (505) 827-2530 • www.nmhealth.org



B. On private property that is not open to the public with the express permission of the person who owns or immediately controls such property;

C. While on the premises of a licensed firearms dealer or gunsmith for the purpose of lawful transfer or repair of a firearm;

D. While engaged in the legal use of a firearm at a properly licensed firing range or sport shooting competition venue; or

E. While traveling to or from a location listed in Paragraphs (1) through (4) of this section; provided that the firearm is in a locked container or locked with a firearm safety device that renders the firearm inoperable, such as a trigger lock.

(2) The New Mexico Regulation and Licensing Department shall conduct monthly inspections of licensed firearms dealers in the State to ensure compliance with all sales and storage laws.

(3) The Department of Health shall, within 20 days, compile and issue a comprehensive report on gunshot victims presenting at hospitals in New Mexico, which shall include (if available): demographic data of gunshot victims, including age, gender, race, and ethnicity; data on gunshot victim's healthcare outcomes; the brand and caliber of the firearm used; the general circumstances leading to the injury; the impact of gunshot victims on New Mexico's healthcare system; and any other pertinent information.

(4) No person, other than a law enforcement officer or licensed security officer, shall possess a firearm on state property, public schools, and public parks.

(5) The New Mexico Department of Health and the New Mexico Environmental Department shall develop a program to conduct wastewater testing for illicit substances, such as fentanyl, at all public schools.

(6) The Children, Youth and Families Department shall immediately suspend the Juvenile Detention Alternative Initiative and evaluate juvenile probation protocols.

(7) The Department of Public Safety shall dispatch additional officers and resources to Bernalillo County and work with the Albuquerque Police Department and Bernalillo County Sheriff to determine the best use of those resources.

(8) The Department of Public Safety shall coordinate with local law enforcement agencies and the district attorneys' offices and assist in apprehension of individuals with outstanding arrest warrants.

I FURTHER DIRECT as follows:

(1) This Order shall be broadly disseminated in English, Spanish, and other appropriate languages to the citizens of the State of New Mexico.

(2) Trigger locks shall be made available free of charge to all firearm owners; provided that each firearm owner shall only be entitled to one free trigger lock. Firearm owners wishing to obtain a free trigger lock should call 505-984-3085 or email info@newmexicanstoppreventgunviolence.org.

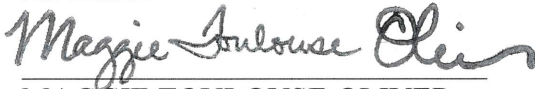
(3) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(4) Any person or entity who willfully violates this Order may be subject to civil administrative penalties available at law.

(5) This Order shall take effect on September 8, 2023, and remain in effect for the duration of the public health emergencies declared in Executive Orders 2023-130 and 2023-132 and any subsequent renewals of those public health emergency declarations, unless otherwise rescinded.

(6) Should any provision of this Order or its application to any person or circumstances be held invalid by a court of law, the remainder of this Order or the application of its provisions to other persons or circumstances shall remain in full force and effect.

ATTEST:



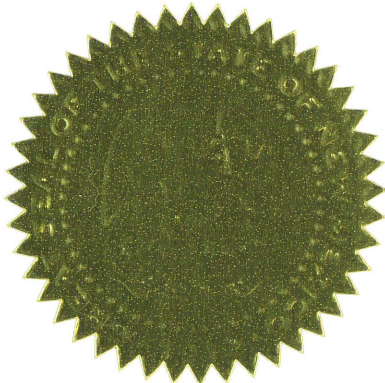
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE

DONE AT THE EXECUTIVE OFFICE
THIS 8TH DAY OF SEPTEMBER 2023

WITNESS MY HAND AND THE GREAT
SEAL OF THE STATE OF NEW MEXICO



PATRICK M. ALLEN
SECRETARY OF THE
NEW MEXICO DEPARTMENT OF HEALTH



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

RANDY DONK, GUN OWNERS OF)
AMERICA, INC., and GUN OWNERS)
FOUNDATION,)

Plaintiffs,)

v.)

Civil Action No. _____

MICHELLE LUJAN GRISHAM, in her)
official capacity as the Governor of)

New Mexico, PATRICK M. ALLEN, in)
his official capacity as the Cabinet Secretary)

of the New Mexico Department of Health,)

JASON R. BOWIE, in his official capacity)
as the Cabinet Secretary of the New Mexico)

Department of Public Safety, and W. TROY)

WEISLER, in his official capacity as the)
Chief of the New Mexico State Police,)

Defendants.)
_____)

DECLARATION OF RANDY DONK

1. My name is Randy Donk. I am an adult, a U.S. citizen, and a resident of New Mexico. I live in Bernalillo County, New Mexico.

2. I make this declaration in support of Plaintiffs' Complaint for Declaratory and Injunctive Relief. Unless otherwise stated, I make this declaration based on personal knowledge. If called as a witness, I can testify to the truth of the statements contained therein.

3. I am a law-abiding person, eligible under both state and federal law to possess firearms, and also eligible under state law to carry a concealed handgun. I am a gun owner, and own more than one firearm, including at least one handgun.

4. I am a member of Gun Owners of America, Inc.

5. I am licensed by the New Mexico Department of Public Safety to carry a concealed handgun and my license is current and valid.

6. I have been licensed by the State of New Mexico to carry a concealed handgun for over ten years, and have successfully passed those state background checks, as well as federal background checks when I purchase firearms. Additionally, I am a Sheriff's Volunteer. As a condition of this position, I was required to pass additional and more stringent background checks, which passed with no issues.

7. On September 8, 2023, I heard that the Governor of the State of New Mexico and the Secretary of the New Mexico Department of Health issued Orders attempting to suspend my ability to publicly carry my firearm, either openly or concealed.

8. I carry my handgun with me every day, and everywhere it is legal to do so. Basically, when I leave my house, even if only going into my front yard, I have my handgun on my person.

9. I live approximately 50 feet from Albuquerque, and travel into Albuquerque regularly to shop for groceries, spend leisure time, and eat at restaurants. I am also aware that there is an ordinance that purports to apply the City of Albuquerque's rules to those who live within 5 miles of the City, like I do. I thus am affected by the challenged actions in both the City of Albuquerque and Bernalillo County.

10. For instance, I frequently shop at Walmart in Albuquerque, and lawfully carry my handgun. I also go to restaurants, like Thai Spice in Albuquerque, and eat. These places I frequent allow firearms to be carried by individuals, like me, who are licensed to carry them.

11. I fully intend to ignore these Orders, because they are clearly unlawful and categorically unconstitutional, as they violate my Second Amendment right to bear arms in public, which the Supreme Court recently reaffirmed. I intend to carry my firearm in the regular places I normally carry, including stores such as Walmart and restaurants in Albuquerque such as Thai Spice.

12. I understand that the State Police will be enforcing these Orders, which could lead to them citing me, fining me, revoking my carry permit, and even prosecuting me criminally.

13. I am now in the position that my Governor and her Secretary have seen fit to suspend the Second Amendment to further an unconstitutional political agenda, placing me in the predicament of either choosing to give up my Constitutional right to public carry, or be cited and arrested for an Order neither of them has the power to enact.

14. If I am arrested, it could lead to the loss of my ability to volunteer with the Sheriff's office, problems with my employment, loss of my concealed handgun permit, or other ramifications that are currently unknown to me.

15. The Second Amendment right states that my God-given, preexisting, natural right to self-defense "shall not be infringed," and yet the Governor and her Secretary are blatantly infringing on that right.

16. I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 9, 2023



RANDY DONK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

RANDY DONK, GUN OWNERS OF)
AMERICA, INC., and GUN OWNERS)
FOUNDATION,)

Plaintiffs,)

v.)

Civil Action No. _____

MICHELLE LUJAN GRISHAM, in her)
official capacity as the Governor of)

New Mexico, PATRICK M. ALLEN, in)
his official capacity as the Cabinet Secretary)

of the New Mexico Department of Health,)

JASON R. BOWIE, in his official capacity)
as the Cabinet Secretary of the New Mexico)

Department of Public Safety, and W. TROY)

WEISLER, in his official capacity as the)
Chief of the New Mexico State Police,)

Defendants.)
_____)

DECLARATION OF ERICH PRATT

1. My name is Erich M. Pratt. I am a U.S. citizen and resident of Virginia. I make this declaration in support of Plaintiffs’ Complaint for Declaratory and Injunctive Relief. Unless otherwise stated, I make this declaration based on personal knowledge. If called as a witness, I can testify to the truth of the statements contained herein.

2. I am the Senior Vice President of Gun Owners of America, Inc. (“GOA”), and the Senior Vice President of Gun Owners Foundation (“GOF”).

3. In that capacity, I oversee staff that is in daily contact with members and supporters

regarding their concerns, questions, requests, and suggestions on how GOA and GOF can best represent their interests. In the last 24 hours, many of our members and supporters have been greatly concerned about actions recently taken by the Governor of New Mexico to restrict Second Amendment rights.

4. Gun Owners of America, Inc. is a California non-stock corporation with its principal place of business at 8001 Forbes Place, Springfield, VA 22151. GOA is organized and operated as a non-profit membership organization that is exempt from federal income taxes under Section 501(c)(4) of the U.S. Internal Revenue Code. GOA was formed in 1976 to preserve and defend the Second Amendment rights of gun owners. GOA has more than 2 million members and supporters across the country, including residents of this district, many of whom are and will be irreparably harmed by the challenged Orders.

5. Gun Owners Foundation is a Virginia non-stock corporation, with its principal place of business at 8001 Forbes Place, Springfield, VA 22151. GOF is organized and operated as a non-profit legal defense and educational foundation that is exempt from federal income taxes under Section 501(c)(3) of the U.S. Internal Revenue Code. GOF is supported by gun owners across the country, including residents of this district, many of whom are and will be irreparably harmed by the challenged Orders.

6. GOA and GOF together have more than two million members and supporters nationwide, including thousands who are New Mexico residents, including within this district and within Bernalillo County.

7. Since the Governor and the Secretary of the Department of Health published these challenged Orders, restricting the carry of firearms within New Mexico, we have received many inquiries about the legality of Defendants' actions, and whether we, as defenders of the Second

Amendment, would be able to assist the citizens of New Mexico in defending their rights.

8. Many of these individuals, our members and supporters, have been and are being irreparably harmed by the Defendants' Orders.

9. GOA and GOF exist to preserve and defend the Second Amendment rights of gun owners. GOA and GOF routinely litigate cases across the country in furtherance of their mission, on behalf of their members and supporters in various states.

10. Many of GOA and GOF's members and supporters are law-abiding residents of New Mexico, and reside in this district, and include those who both concealed carry and openly carry handguns in the normal course of their day, in both the City of Albuquerque and Bernalillo County.

11. GOA and GOF have heard from numerous individuals who carry their firearms, either openly or concealed, who will now be subject to being arrested, cited, and prosecuted for the simple act of engaging in protected constitutional behavior.

12. In other words, GOA and GOF's members and supporters are representative of those affected by these Orders which has a ubiquitous and negative effect on the firearms community in Bernalillo County and the City of Albuquerque

13. Protection of these rights and interests is germane to our mission, which is to preserve and protect the Second Amendment and the rights of Americans to keep and bear arms, including against overreach by anti-gun bureaucrats. GOA and GOF routinely litigate cases throughout the country on behalf of their members and supporters, and GOA and GOF are capable of fully and faithfully representing the interests of their members and supporters without participation by each of the individuals and entities.

14. In different ways and to varying degrees, each of our members and supporters are irreparably harmed by these Orders. Some will decide to refrain from engaging in constitutionally

protected conduct because they do not want to be subjected to being cited, arrested, or prosecuted and the attendant loss of jobs, licenses, or other harms, and some will carry their firearms publicly, notwithstanding the illegal orders, and be subjected to being cited, arrested and prosecuted.

15. If these Orders are not immediately enjoined, our members' and supporters' Second Amendment rights will be significantly curtailed.

16. I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 9, 2023


ERICH PRATT

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Randy Donk; Gun Owners of America, Inc.; Gun Owners Foundation

(b) County of Residence of First Listed Plaintiff Bernalillo (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Mark Caruso, Caruso Law Offices, PC; 505-883-5000 4302 Carlisle NE, Albuquerque, NM 87107

DEFENDANTS

Michelle Lujan Grisham, Patrick M. Allen, Jason R. Bowie, W. Troy Weisler

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Labor, Intellectual Property Rights, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 USC 1983

Brief description of cause: Lawsuit against Governor, State Police and Dept. of Health for violation of 2nd and 14th Amendments with recent anti-gun Orders

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

9/9/2023 / Mark Caruso

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.