



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

S.B. NO. 1071, RELATING TO THE ACQUISITION OF FIREARMS BY LAWFUL PERMANENT RESIDENT ALIENS.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Wednesday, March 4, 2015

TIME: 9:15 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): WRITTEN TESTIMONY ONLY.

(For more information, contact Lance Goto,
Deputy Attorney General, at 586-1160)

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General strongly supports this bill.

The purpose of this bill is to make it clear that the police may grant applications to acquire firearms to lawful permanent resident aliens.

On September 17, 2014, United States District Judge, Michael Seabright, granted plaintiff's motion for summary judgment and for permanent injunctive relief in the case of Steve Fotoudis v. City and County of Honolulu, Louis Kealoha, Chief of the Honolulu Police Dep't in his official capacity; David Louie, Attorney General of Hawaii, in his official capacity, in Civ. No. 14-00333 JMS-RLP. Fotoudis was a lawful permanent resident alien who had moved to Hawaii from Australia. He attempted to apply for a permit to acquire a firearm, but the Honolulu Police Department did not allow him to do so because he was not a citizen of the United States, and section 134-2(d), Hawaii Revised Statutes (HRS), provides that, with limited exceptions inapplicable to Fotoudis, police chiefs may only issue permits to acquire firearms to citizens of the United States. In evaluating Fotoudis' action brought under 42 U.S.C. § 1983, the court found the following:

This classification violates the equal protection clause of the U.S. Constitution. HRS §134-2(d) is thus unconstitutional as-applied to Fotoudis (and other lawful permanent resident aliens), and Defendants are therefore permanently enjoined from denying Fotoudis the opportunity (1) to apply for a permit to acquire firearms, and (2) to obtain such permit, if he otherwise meets the qualifications of state law, as specifically set forth in the Conclusion of this Order.

The court also found the following:

Similarly, interpreting §134-2(d) to deny Fotoudis the opportunity to apply for (and to obtain, if otherwise qualified) a permit to acquire firearms, solely because he is not a U.S. citizen, also violates the Second Amendment. Lawful permanent residents such as Fotoudis "are firmly on the path to full citizenship," and "are entitled to a wide array of constitutional rights."

Upon making those findings, the court ordered the following:

Defendants and/or their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of this injunction, are enjoined from precluding lawful permanent resident aliens residing in the State of Hawaii from applying for a permit to acquire firearms as set forth in HRS §134-2(d). Defendants must also . . . insofar as Fotoudis is determined to be fit and qualified to acquire firearms, to thereafter issue in the normal course to Fotoudis the permit contemplated by HRS §134-2, vesting Fotoudis with the same rights and privileges to acquire firearms as those of United States citizens who obtain permit(s) pursuant to §134-2.

This bill seeks to amend section 134-2, HRS, to address the constitutional concerns raised by the court in the Fotoudis case.

The Department respectfully requests the passage of this bill.