

No. 16-894

**In the
Supreme Court of the United States**

Edward Peruta, *et al.*,
Petitioners,

v.

State of California, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United
States Court of Appeals for the Ninth Circuit

**BRIEF OF *AMICI CURIAE* WESTERN STATES
SHERIFFS' ASSOCIATION, CALIFORNIA RESERVE
PEACE OFFICERS ASSOCIATION, INTERNATIONAL
LAW ENFORCEMENT EDUCATORS AND TRAINERS
ASSOCIATION, LAW ENFORCEMENT LEGAL
DEFENSE FUND (*AMICI* CONTINUED ON INSIDE
COVER) IN SUPPORT OF PETITIONERS**

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(AMICI CONTINUED)

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INTEREST OF *AMICI CURIAE*¹**Western States Sheriffs' Association**

The Western States Sheriffs' Association ("WSSA") was established in 1993, and consists of more than three hundred members from fifteen member states throughout the Western United States. The mission of WSSA is to assist Sheriffs and their offices with federal and state legislative issues, address policy and procedural matters, and work together to keep the office of Sheriff strong. WSSA supports the right of law-abiding citizens to carry firearms outside their homes for legitimate purposes, including lawful self-defense.

California Reserve Peace Officers Association

The California Reserve Peace Officers Association was founded in 1974 for the purpose of raising the professional, educational and employment standards of California reserve peace officers. CRPOA members work on a part-time basis with full-time regular officers to provide law enforcement services at the city, county, district, and State levels, including uniformed patrol, investigations, undercover and vice operations, and search and rescue. Approximately 600 law enforcement agencies currently employ more than 5,000 reserve law enforcement officers in California.

¹No party's counsel authored this brief in whole or in part. No party or party's counsel, and no person other than *amici*, their members, or their counsel contributed money that was intended to fund preparation or submission of this brief. Counsel of record for all parties received timely notice of intent to file this brief under Rule 37.2(a) and consent was granted by all parties.

International Law Enforcement Educators and Trainers Association

International Law Enforcement Educators and Trainers Association (“ILEETA”) is an association of 4,000 professional law enforcement instructors committed to the reduction of law enforcement risk and to saving lives of police officers and the general citizenry through the provision of training enhancements for criminal justice practitioners. ILEETA has joined this brief because it recognizes that citizens who are legally licensed to carry firearms pose little or no threat to law enforcement officers, but instead help improve public safety and reduce crime. ILEETA’s *amicus* briefs were cited by Justice Breyer in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and by Justices Alito and Stevens in *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

Law Enforcement Legal Defense Fund

Law Enforcement Legal Defense Fund (“LELDF”) is a 501(c)(3) non-profit organization, headquartered in Alexandria, Virginia, that provides legal assistance to law enforcement officers. LELDF has aided nearly one hundred officers, many of whom have been acquitted, mostly in cases where officers have faced legal action for otherwise authorized and legal activity in the line of duty. While LELDF supports measures that will further legitimate public safety interests and protection of law enforcement officers, it does not support provisions that are ill-conceived and violate the constitutional rights of citizens.

Law Enforcement Action Network

Law Enforcement Action Network (“LEAN”) is a sister organization of LELDF, headquartered in Alexandria, Virginia, which has received 501(c)(4) status. LEAN promotes policies that protect law enforcement officers’ personal and professional safety.

Law Enforcement Alliance of America, Inc.

Law Enforcement Alliance of America, Inc. (“LEAA”) is a non-profit, non-partisan advocacy and public education organization founded in 1992 and made up of thousands of law enforcement professionals, crime victims, and concerned citizens. LEAA represents its members’ interests by assisting law enforcement professionals and seeking criminal justice reforms that target violent criminals, not law-abiding citizens. LEAA has been an *amicus curiae* in numerous cases in the federal courts, and on the prevailing side in two cases in this Court.

Individual *Amici*

The following individual *amici* are elected County Sheriffs in California: Sheriffs Steve Bernal (Monterey), Doug Binnewies (Mariposa), Tom Bosenko (Shasta), Adam Christianson (Stanislaus), John D’Agostini (El Dorado), Bruce G. Haney (Trinity), Dave Hencratt (Tehama), Jon E. Lopey (Siskiyou), Margaret Mims (Fresno), Mike Poindexter (Modoc), David Robinson (Kings), Martin Ryan (Amador), Tim Standley (Sierra), Rick Stephens (Alpine), Jay Varney (Madera), Vern Warnke (Merced), and Donny Youngblood (Kern).

Thus, *amici* are all organizations with members who are law enforcement officers or who support law

enforcement officers and agencies. *Amici* believe that the perspective of front line law enforcement personnel and organizations should be helpful in evaluating whether any interest in public safety is served by the interpretation of “good cause” that denies all but a handful of citizens the right to lawfully carry concealed firearms outside their homes.

INTRODUCTION

The opinion of the Ninth Circuit *en banc* panel is founded on the literally unprecedented proposition that “the Second Amendment does not preserve or protect a right of a member of the general public to carry concealed firearms in public.” App. 3. Rather than recognizing the right to bear arms as a unitary historic right subject to certain restrictions, the *en banc* panel’s decision artificially splits the right to bear arms into a right to carry a firearm openly outside the home, which may or may not exist, and a right to carry concealed outside the home, which does not exist. The logical, constitutional, and historical fallacies resulting from this disturbing approach are addressed in the petition for certiorari, and in the briefs of other *amici* in this case.

The *amici* in the present brief provide a different but important perspective, that of law enforcement officers charged with preserving peace and safety of our communities. For a federal appellate court to read out of existence any protection for the most important manner in which a constitutional right is exercised outside the home (concealed carry), and to cast doubt on the constitutional protection for any remaining ability to exercise that right (open carry), implies that there must be some compelling, indeed overwhelming,

public safety need to deprive law-abiding citizens of their individual Second Amendment right to defend their lives, as recognized in *Heller* and *McDonald*.² As *amici* demonstrate, however, disarming law-abiding citizens has no positive effect in controlling violent crime.

The procedural history of this case also demonstrates the disarray in the lower courts regarding the standards to be applied in Second Amendment cases. The District Court applied “intermediate scrutiny.” The Ninth Circuit three-judge panel applied tests based on textual and historical analysis, as this Court did in *Heller*. The Ninth Circuit *en banc* panel undertook a unique analysis in which the right to bear arms was broken into two pieces, resulting in a probable denial of any constitutional protection for the right to bear arms outside the home for defense of self and others. In addition to the reasons outlined in the petition for certiorari, these contradictory approaches in the same case illustrate why it is necessary for this Court to bring some clarity to Second Amendment jurisprudence in this area.

² Even if there were some perceived public safety need to eviscerate (in the words of the *en banc* panel dissent (App-55)) the right of the people to bear arms, *Heller* expressly rejected any balancing test. “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. A constitutional guarantee subject to future judges’ assessments of its usefulness is no constitutional guarantee at all. Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad.” *Heller* at 634-35.

The majority opinion for the *en banc* panel and the concurrence both contend that the government's interest in public safety would outweigh the plaintiffs' Second Amendment rights in this case, if they had any such rights. App-44, App-46. This *amicus* brief shows that licensing or permitting systems that freely allow law-abiding citizens to carry firearms outside the home, whether openly or concealed, do not conflict with public safety, and are indeed the norm throughout the nation.

SUMMARY OF ARGUMENT

Rather than posing a danger to public safety, allowing law-abiding individuals to obtain concealed carry licenses saves innocent lives and aids law enforcement.

Of the 50 states, 42 have either a "shall-issue" system of concealed carry licensing, in which licenses are freely issued to law-abiding citizens, or do not require any license or permit to carry concealed. Forty-five states allow open carry, and the majority do not require a permit. San Diego County's nearly total prohibition on carry of handguns, openly or concealed, is an extreme outlier.

San Diego County's assertions that allowing law-abiding citizens to carry concealed will result in firearms accidents on public streets, escalation of minor altercations into public gun battles, and a need to adopt extreme security measures at every place that is open to the public are unfounded. When states began implementing "shall-issue" systems, similar dire predictions were made. Those fears turned out to be baseless. No state that implemented a "shall-issue" system has reverted to a highly restrictive system or

imposed a *de facto* ban such as the one in San Diego County.

Because law-abiding concealed carry permit holders are an aid to law enforcement, large scale surveys of law enforcement officers of all ranks, and of police chiefs and sheriffs in particular, have shown overwhelming support for concealed carry by properly licensed citizens. Very large majorities agree that concealed carry by the law-abiding helps reduce crime.

The evidence shows that individuals who obtain concealed carry permits are extremely law abiding. The rates at which they commit crimes are small fractions of the crime rates for the public as a whole. Figures cited by the *en banc* panel concurrence to show that persons with concealed carry licenses may become murderers are based on deeply faulty information published on the website of an advocacy group. Criminals cannot obtain a carry license, and would not go through the application process requiring a background check. Most violent crime is committed by repeat criminal offenders, not law-abiding citizens suddenly gone wild.

Multiple well-designed studies demonstrate that defensive gun uses by citizens to prevent or defeat criminal attacks are prevalent and save lives. A large number of those defensive gun uses occur outside the home, and the percentage occurring outside the home has undoubtedly increased with the rapid expansion of the number of concealed carry permit holders over the past twenty years.

ARGUMENT

I. EXPERIENCE SHOWS THAT CONCEALED CARRY BY LICENSE OR PERMIT HOLDERS DOES NOT INCREASE CRIME OR PUBLIC DANGER.

A. The use of fairly administered licensing laws allowing concealed carry by law-abiding citizens is the norm nationally.

There are two major types of laws relating to carrying of firearms pursuant to a permitting or licensing system. In “shall issue” states, state or local authorities are required to issue a carry permit to any individual who meets certain objective criteria and qualifications. There is often little or no discretion by the authorities as to whether the permit will be issued.³ Eleven states do not require any kind of permit for its residents to carry a handgun concealed.⁴

³ Connecticut has a system which is technically discretionary, but which historically has been administered in an objective fashion. It is thus counted here as a “shall issue” state.

⁴ Alaska (Alaska Stat. §§ 11.61.220, 18.65.700-18.65.810); Arizona (Ariz. Rev. Stat. Ann. § 4-244(30)); Arkansas (Ark. Code Ann. § 5-73-120(a)); Idaho (Idaho Code Ann. § 18-3302(3-4)); Kansas (Kan. Stat. Ann. §§ 75-7c03(a), 21-6302); Maine (Me. Rev. Stat. tit. 25, § 2001-A); Mississippi (Miss. Code Ann. § 45-9-101(24)); Montana (Mont. Code Ann. § 45-8-317 (Montana requires a permit to carry concealed only inside a city or town, thus exempting over 99% of the state)); Vermont (no specific statute, but constitutional right to carry without a permit is recognized pursuant to *State v. Rosenthal*, 55 A. 610 (Vt. 1903); West Virginia (W. Va. Code § 61-7-7(c)); Wyoming (Wyo. Stat. Ann. § 6-8-104(a)-(b)). As of this writing, New Hampshire’s legislature had passed legislation allowing open and concealed carry without a permit, which is expected to be signed by the governor. Dan Tuohy, *House passes repeal of ‘concealed carry’ gun license law*, NEW HAMPSHIRE UNION

Of the 50 states, 42 states either do not require a permit or have “shall issue” laws.⁵

In “may issue” states, the authorities are granted discretion as to whether a concealed carry permit will be issued. Eight states (including California) plus the District of Columbia have such systems.

Only five states (including California) and the District of Columbia generally ban open carry of loaded handguns.⁶ Forty-five states allow open carry. *Id.* The majority of those states do not require any sort of license or permit to carry handguns openly. *Id.*

Thus, “shall issue” concealed carry permitting systems, and liberal open carry, are the norm nationwide. A jurisdiction which effectively bans both forms of carry is an extreme outlier.

Amici are a diverse group, and do not advocate in this brief any particular kind of concealed carry licensing system. However, *amici* do contend that a system that effectively denies the right of law-abiding citizens to carry firearms *in some manner* for self-defense outside the home runs afoul of the Second Amendment and serves no public safety purpose.

LEADER (Feb. 9, 2017), <http://www.unionleader.com/politics/house-passes-repeal-of-concealed-carry-gun-license-law-20170209>

⁵ See NRA Institute for Legislative Action, Gun Laws, <https://www.nraila.org/gun-laws/> (interactive map).

⁶ See OpenCarry.org, Open Carry, <http://www.opencarry.org/maps/map-open-carry-of-a-properly-holstered-loaded-handgun/>

B. Predictions about the supposed dangers of licensed carry have been proven false.

San Diego County contended below that effectively banning concealed carry is necessary because:

Concealed carry of handguns allows for stealth and surprise. Limiting the number of loaded and concealed firearms in public places helps to keep the balance in favor of law enforcement and avoids the necessity for every place that is open to the public – restaurants, malls, theaters, parks, etc. – to be equipped with metal detectors, fencing and other forms of security, in order to protect patrons from the fear of widespread and unchecked concealed firearms.

Brief of Appellee 26 (Dkt. 49)

San Diego also quoted from a pre-*Heller* Illinois intermediate state court regarding the supposed danger if concealed carry were to be allowed by persons without a “culpable mental state”:

[A]ccidents with loaded guns on public streets or the escalation of minor public altercations into gun battles or, as the legislature pointed out, the danger of a police officer stopping a car with a loaded weapon on the passenger seat.... [O]therwise innocent motivations may transform into culpable conduct because of the accessibility of weapons as an outlet for subsequently kindled aggression.... [T]he underlying activity of

possessing or transporting an accessible and loaded weapon is itself dangerous and undesirable, regardless of the intent of the bearer since it may lead to the endangerment of public safety.... [A]ccess to a loaded weapon on a public street creates a volatile situation vulnerable to spontaneous lethal aggression in the event of road rage or any other disagreement or dispute.

Brief of Appellee 26 (Dkt. 49) (quoting *People v. Marin*, 795 N.E.2d 953, 962 (Ill. App. 2003)) (citations omitted).

Yet, “shall issue” licensing systems have spread rapidly throughout the states over the past three decades—paralleling the national trend towards more scrupulous compliance with the Second Amendment. As noted above, 42 states now have such system, or do not require a permit at all. In many states, when the legislature was considering carry license reform to make the system fair, objective, and non-arbitrary, opponents made predictions of calamity similar to the claims raised by San Diego County in the instant case.

For example, when Ohio’s “shall issue” licensing system went into effect in 2004, there were fears that the law “would make public shoot-outs common and fill the streets with blood.”⁷ Based on experience, some of the worriers have forthrightly admitted that they

⁷ Tom Skoch, *The Editor’s Column: Facts Top Feelings, Change Views On Gun Issues*, THE MORNING J. (Feb. 6, 2011), <http://www.morningjournal.com/articles/2011/02/06/opinion/doc4d4e1b29419fe014211343.txt?viewmode=fullstory>.

were wrong.⁸

John B. Holmes, then District Attorney of Harris County (which contains Houston) and Glenn White, former President of the Dallas Police Association, were strong opponents of licensed carry in Texas. Both changed their minds after watching how it worked, and seeing that their fears were incorrect.

Holmes said, “I . . . [felt] that such legislation . . . present[ed] a clear and present danger to law-abiding citizens by placing more handguns on our streets. Boy was I wrong. Our experience in Harris County, and indeed statewide, has proven my initial fears absolutely groundless.” As White observed, “All the horror stories I thought would come to pass didn’t happen. . . . I think it’s worked out well, and that says good things about the citizens who have permits. I’m a convert.”⁹

Florida state legislator Ron Silver, “the leading opponent” of that state’s groundbreaking “shall issue” law in 1987, said in November 1990, “There are lots of people, including myself, who thought things would be a lot worse as far as that particular situation [carry reform] is concerned. I’m happy to say they’re not.” John Fuller, general counsel for the Florida Sheriffs Association, stated: “I haven’t seen where we have had any instance of persons with permits causing violent crimes, and I’m constantly on the lookout.”¹⁰ The

⁸ Skoch, *supra* note 7.

⁹ H. Sterling Burnett, *Texas Concealed Handgun Carriers: Law-abiding Public Benefactors*, Nat’l Center for Pol’y Analysis (June 2, 2000), <http://www.ncpa.org/pub/ba324>.

¹⁰ Clayton E. Cramer & David B. Kopel, “*Shall Issue*”: *The New*

Metro Dade Police Department, out of concern with the risks of the new law, kept detailed records of every incident involving concealed weapon licensees from enactment of the new law in 1987 until August 31, 1992, when the rarity of problems caused the department to cease tracking such incidents.¹¹

Michigan adopted a “shall issue” law in 2001. In 2004, the *Daily Oakland Press* reported on the first three years of the new law: the claims that the law “was surely a recipe for disaster” turned out to be wrong. “Law enforcement officers and local officials say Michigan’s streets are no safer—or more dangerous—than they were three years ago when the law went into effect. But there have been no major incidents involving people with the permits. No accidental discharges. No murders. No anarchy.”¹²

Significantly, no “shall issue” state has reverted to restrictive licensing or a *de facto* ban on licensed carry. Neither have those 42 states had to resort to “metal detectors, fencing and other forms of security” in all public places such as “restaurants, malls, theaters, and parks,” as San Diego predicted. The “accidents with loaded guns on public streets” and the “escalation of minor public altercations into gun battles” between permit holders have not materialized in those states. The imagined “volatile situation vulnerable to spontaneous lethal aggression” has not been created in

Wave of Concealed Handgun Permit Laws, 62 TENN. L. REV. 679, 693 (1995).

¹¹ *Id.* at 692-03.

¹² Jose Juarez, *Our Quiet Rise In Handguns*, DAILY OAKLAND PR., June 27, 2004 (webpage link no longer available).

Iowa, New Hampshire, Kansas, and the other states in which concealed carry permits are freely issued to law-abiding citizens. In short, there is no public safety benefit that justifies a nearly total ban on law-abiding citizens' right to carry concealed handguns outside the home.

II. LAW ENFORCEMENT PROFESSIONALS OF ALL RANKS STRONGLY SUPPORT CONCEALED CARRY BY LAW ABIDING CITIZENS.

Law enforcement professionals know that, instead of leading to a “Wild West” atmosphere or blood running in the streets, licensed concealed carry by law-abiding citizens helps reduce crime, and assists police officers. That is the overwhelming opinion of experienced law enforcement personnel as revealed in a recent, large scale, national survey.

The national law enforcement organization PoliceOne conducted its Gun Policy & Law Enforcement Survey between March 4 and March 13, 2013, receiving 15,595 responses from verified police professionals across all ranks and department sizes.¹³ Respondents were asked: “Do you support the concealed carry of firearms by civilians who have not been convicted of a felony and/or not been deemed psychologically/medically incapable?” PoliceOne Survey, Question 19. The results were overwhelming:

¹³ PoliceOne, *Gun Policy & Law Enforcement Survey* (2013), http://ddq74coujv1i.cloudfront.net/p1_gunsurveysummary_2013.pdf (“PoliceOne Survey”). A description of the study is at <http://www.policeone.com/police/products/press-releases/6188461-policeone-com-releases-survey-of-15-000-law-enforcement-professionals-about-u-s-gun-control-policies/>.

91.3% of the respondents selected “Yes, without question and without further restrictions,” and only 8.6% were of the belief that concealed carry should be restricted to law enforcement officers, were neutral, or were unsure. This widespread law enforcement support for carry by properly licensed, law-abiding citizens is based, no doubt, on the experience most of them have with states that freely allow carry by such individuals.

The respondents were also asked: “On a scale of one to five—one being low and five being high—how important do you think legally-armed citizens are to reducing crime rates overall”? *Id.*, Question 20. Over half of these law enforcement professionals (54.7%) believed legally-armed citizens should be given the top ranking score of “five.” A total of 90.4% ranked legally-armed citizens as being in the range of three to five on the scale of importance. Those who believed that armed citizens were of relatively little or no importance (one to two on the ranking scale) constituted only 9.6% of respondents. *Id.*

Police leadership shares that view. The National Association of Chiefs of Police recently posted the results of their 28th Annual Survey (2016), in which survey questions were posed by mail to Chiefs of Police and Sheriffs in the United States. According to NACOP, the survey “represents a broad cross section of professional command officers involving every state and every size department.”¹⁴

In answer to the question “Can qualified, law-abiding armed citizens help law enforcement reduce

¹⁴ See <http://www.nacoponline.org/>.

violent criminal activity?” over three-fourths (76%) said “Yes,” more than four times the percentage who said “No” (18.6%).¹⁵ Regarding concealed carry specifically, the chiefs and sheriffs were asked “Does your department support nationwide recognition of state issued concealed weapon permits?” Of these law enforcement leaders, 86.4% answered “Yes,” eight times as many as the 10.6% who answered “No.”¹⁶

Chiefs of Police and Sheriffs across the country, from large cities to rural areas, have publicly recognized the value of armed citizens in aiding law enforcement and defending innocent life. In Wisconsin, Milwaukee County Sheriff David Clarke has recently stated, “I want as many law-abiding citizens to arm themselves in this county as we can get so that I have the partner that I need to beat back this sort of violence.”¹⁷ Detroit Police Chief James Craig also has been a leader in urging his community to arm itself. *Id.* Law enforcement personnel cannot be everywhere, so lawfully armed citizens must constitute the first line of defense. As Polk County, Florida, Sheriff Grady Judd recently stated, “It’s more important to have a gun in your hand than a cop on the phone.” *Id.*

¹⁵ *Id.* 5.4% were “N/A.”

¹⁶ *Id.* 2.9% were “N/A.”

¹⁷ Cody Derespina, *Growing number of police chiefs, sheriffs join call to arms*, FOXNEWS.COM, Jan. 15, 2016, <http://www.foxnews.com/us/2016/01/15/growing-number-police-chiefs-sheriffs-join-call-to-arms.html>.

III. THE CHALLENGED POLICY DEPRIVES LAW-ABIDING CITIZENS OF THEIR SECOND AMENDMENT RIGHT TO SELF-DEFENSE AND DOES NOTHING TO REDUCE VIOLENT CRIME.

A. Individuals with concealed carry permits are exceptionally law abiding.

Before the *en banc* panel, the State of California argued that a “good cause” policy denying concealed carry licenses to nearly all law-abiding citizens:

[A]dvances public safety by, among other things, limiting the lethality of violent crimes, limiting the ability of criminals to take advantage of stealth and surprise, protecting police officers, limiting the danger to other members of the public, and limiting the likelihood that minor altercations in public will escalate into fatal shootings. [citations omitted]

Brief of the State of California 19 (Dkt. 261-1).

This argument assumes that “criminals” will use “stealth and surprise” after being issued their concealed carry licenses when, of course, criminals are not eligible to receive carry licenses. It also assumes that individuals who have undergone fingerprinting and a background check, and satisfied all other requirements, will next proceed to commit lethal violent crimes and fatal shootings in public.

But the data show that such individuals are extremely unlikely to commit violent crimes. In several “shall issue” states, a state agency produces annual

reports of all criminal justice incidents involving concealed handgun licensees. While the details of how the data are reported vary among the states, the reports unanimously show that almost all licensees are highly law-abiding.

For example, Colorado issued 154,434 concealed handgun carry permits between 2009 and 2013.¹⁸ During that same period, only 1,390 were revoked, of which 931 (.6% of permits issued) were due to an arrest. Contrast this with the arrests of more than 230,000 individuals in Colorado *in the year 2013 alone*,¹⁹ constituting 4.4% of the population.²⁰ Data from other states are consistent:

Minnesota: One handgun crime (broadly defined, such as driving while under the influence if a handgun is in the car) per 1,423 licensees.²¹

Michigan: 161 charges of misdeeds involving

¹⁸ David Kopel, *Guns on University Campuses: The Colorado Experience*, THE WASHINGTON POST (Apr. 20, 2015), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/04/20/guns-on-university-campuses-the-colorado-experience/?utm_term=.98ec9def0fa7.

¹⁹ *Crime in the United States: Table 69, Arrests by State, 2013*, U.S. Department of Justice, Federal Bureau of Investigation, https://ucr.fbi.gov/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/tables/table-69/table_69_arrest_by_state_2013.xls.

²⁰ Colorado had an estimated population of 5,271,132 in 2013. <https://www.census.gov/data/datasets/2015/demo/pepest/state-total.html>

²¹ The full data and details for Minnesota, Michigan, Ohio, Louisiana, Texas, and Florida are presented in David B. Kopel, *Pretend "Gun-Free" School Zones*, 42 CONN. L. REV. 515, 564-69 (2009).

handguns (including duplicate charges for one event, and charges which did not result in a conviction) in 2007 and 2008 out of an approximate Michigan population of 190,000 licensees.

Ohio: 142,732 permanent licenses issued since 2004, and 637 revocations for any reason, including moving out of state.

Louisiana: Licensee gun misuse rate, all reasons, of less than 1 in 1,000.

Texas: Concealed handgun licensees are 79 percent less likely to be convicted of crimes than the non-licensee population. Only 2/10 of 1 percent of licensees were ever convicted of a violent crime or firearms regulation crime.

Florida: The data show a rate of 27 firearms crimes per 100,000 licensees.

In sum, people with carry licenses are *much more law-abiding* than the general population.

Instead, evidence and law enforcement experience show that most violent crimes are committed by repeat offenders, who would almost always be ineligible to receive a concealed carry license (assuming they would apply for one, which they would not). For example, an analysis of three years of homicide data by the New York Times revealed a compelling fact. According to the NYPD's Deputy Commissioner for Strategic Initiatives, Michael J. Farrell, more than 90 percent of the killers in New York City had criminal records; and of those who wound up killed, more than half had them. Jo Craven McGinty, *New York Killers, and Those Killed, by Numbers*, New York Times (April 28, 2006).

Data from another metropolitan area confirm this pattern. The most recent annual report for Milwaukee homicides states that “Almost 100% of the 2015 known suspects had a criminal history” and adds that “The overwhelming majority of suspects have criminal histories going back to 2005.” Milwaukee Homicide Review Commission, Annual Report 2015, Homicide and Non-Fatal Shootings 48.²² Moreover, 83% of the homicide victims had prior arrest histories. *Id.* at 42. Most unlawful homicides, at least in urban areas, involve criminals killing each other, not law-abiding citizens suddenly gone wild.

To support the proposition that concealed carry licensees may become dangerous murderers, the concurrence to the *en banc* panel decision contends that “Nationwide, since May 2007, concealed-carry permit holders have shot and killed at least 17 law enforcement officers and more than 800 private citizens” App. 47-48 (citing “*Concealed Carry Killers*, Violence Policy Center, www.concealedcarrykillers.org (last visited Apr. 6, 2016).”).²³ If one accepted those data as accurate, that would amount to fewer than 100 per year over the nine year period between May 2007 and April 2016.

There are currently approximately 14.5 million concealed carry permit holders. Crime Prevention Research Center, *Concealed Carry Permit Holders*

²² <http://city.milwaukee.gov/ImageLibrary/Groups/cityHRC/reports/2015AnnualReportFINAL.pdf>

²³ The VPC’s “Concealed Carry Killers” website is frequently updated, so the numbers reported are a moving target.

*Across the United States: 2016.*²⁴ How many homicides would one expect to occur annually among 14.5 million people if the general murder rate for the United States as a whole were used? The murder rate for the general population is 5 per 100,000 inhabitants, or 50 per million.²⁵ For 14.5 million people, the expected number of murders annually for the general population would be 725. So even if one accepted the data provided by the anti-Second Amendment VPC, it represents a homicide rate for concealed carry permit holders that is less than one-seventh of that of the general population.²⁶

But the VPC data is flawed to a point approaching the fraudulent. In 2012, one noteworthy authority analyzed in detail the VPC data up until that time. Clayton Cramer, *Violence Policy Center's Concealed Carry Killers: Less than it Appears.*²⁷ Cramer found, for example, that of the 374 individuals allegedly killed by permit holders until the time of that analysis, 132 were suicides without any attack on others. Many others were cases where the person committing the

²⁴ http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2814691.

²⁵ *Crime in the United States: Table 16, Rate: Number of Crimes per 100,000 Inhabitants by Population Group, 2015*, U.S. Department of Justice, Federal Bureau of Investigation, <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-16>

²⁶ We note also that the 14.5 million concealed carry permit holders are all adults, whereas rates for the general population include children, who rarely commit homicides. One would thus expect a higher homicide rate per 100,000 adults, but in fact the rate is drastically lower for concealed carry permit holders.

²⁷ Available at <http://ssrn.com/abstract=2095754>.

crime was clearly not a licensee or the license status could not be verified; where the individual was found by the criminal justice system to be in the right, or was not even charged; where the homicide took place in the individual's home or business, where a license to carry is not generally required; where the death was accidental within the home; or where there were other significant distortions or errors. After excluding incidents where the data was wrong or a concealed carry license was irrelevant, Cramer's analysis found a total of only 79 incidents, resulting in 92 deaths. *Id.* at 38. In other words, the number of deaths was less than one-fourth the number claimed by VPC. If that ratio is carried forward in the years after 2012, one may expect that the relevant rate of homicides by carry permit holders is, based on the corrected VPC data, on the order of one twenty-eighth of the rate of the population generally (one-seventh of the general population rate if VPC's figures are accepted, multiplied by one-fourth if the error rate by VPC has persisted).

B. Licensed carry reduces crime.

Another way in which licensed carry promotes the safety of individuals and reduces crime is when individuals licensed to carry use their firearms to repel an attack. There have been more than a dozen major surveys regarding the frequency of defensive gun use ("DGU") in the modern United States. The results of the surveys range from a low of 760,000 annually to a high of 3 million. The more recent studies, which report higher numbers, are much more methodologically sophisticated. GARY KLECK,

TARGETING GUNS: FIREARMS AND THEIR CONTROL 149-64, 187-89 (1997).

Gary Kleck and Mark Gertz conducted an especially thorough survey in 1993, with stringent safeguards to weed out respondents who might misdescribe or misdate a DGU story. Kleck and Gertz found results indicating between 2.2 and 2.5 million DGUs annually. Gary Kleck & Marc Gertz, *Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun*, 86 J. Crim. L. & Criminol. 150 (1995).

The Kleck/Gertz survey found that most defensive uses involved handguns, and the large majority of defensive uses do not involve firing the weapon, but merely displaying it to deter an attacker. *Id.* at 175 (80 percent of DGUs are handguns; 76 percent do not involve a shot being fired).²⁸

²⁸ Marvin Wolfgang, one of the most eminent criminologists of the twentieth century, reviewed Kleck's findings. He wrote:

I am as strong a gun-control advocate as can be found among the criminologists in this country.... I would eliminate all guns from the civilian population and maybe even from the police. I hate guns....

...

Nonetheless, the methodological soundness of the current Kleck and Gertz study is clear....

...

The Kleck and Gertz study impresses me for the caution the authors exercise and the elaborate nuances they examine methodologically. I do not like their conclusions that having a gun can be useful, but I cannot

Philip Cook of Duke and Jens Ludwig of Georgetown were skeptical of Kleck's results, so they conducted their own survey for the Police Foundation. That survey produced an estimate of 1.46 million DGUs.²⁹ The National Crime Victimization Survey (NCVS), using a much less targeted approach, estimates only 108,000 DGUs a year. See Philip J. Cook *et al.*, *The Gun Debate's New Mythical Number: How Many Defensive Uses Per Year?*, 16 J. Pol'y Analysis & Mgmt. 463, 468 (1997).

The National Opinion Research Center argues that the figures from Kleck are probably too high, and from the NCVS too low; the Center argues that the actual annual DGU figure is in the range of 256,500 to 1,210,000. Tom W. Smith, *A Call for a Truce in the DGU War*, 87 J. Crim. L. & Criminol. 1462 (1997).

There is no need to determine the precise figure. All social science research shows that defensive gun use is frequent in the United States.

The estimates above relate to all defensive gun uses, whether inside or outside the home. However, Professor Kleck's research found that 26.8% of DGUs occurred in a location away from the user's home, and that another 35.9% took place in places near the

fault their methodology. They have tried earnestly to meet all objections in advance and have done exceedingly well.

Marvin Wolfgang, *A Tribute to a View I Have Opposed*, 86 J. CRIM. L. & CRIMINOL. 188, 191-92 (1995).

²⁹ PHILIP COOK & JENS LUDWIG, GUNS IN AMERICA: RESULTS OF A COMPREHENSIVE NATIONAL SURVEY OF FIREARMS OWNERSHIP AND USE (1996).

defender's home (yard, carport, street adjacent to the home, etc.) GARY KLECK, *TARGETING GUNS* 192 (1997). The percentages of DGUs outside the home are likely to be significantly larger now than when Kleck published this research, because the number of concealed carry permit holders has risen from roughly 2.7 million in 1999 to 14.5 million in 2016. Crime Prevention Research Center, *Concealed Carry Permit Holders Across the United States: 2016* 3. Thus, a fair, licensed concealed carry system will facilitate individual protection and crime reduction in the places where a large fraction of DGUs occur.

A recent survey of defensive gun use by civilians in the United States examined 4,699 such incidents gathered from news accounts and law enforcement news releases. Of these, 285 incidents identified the defender as having a carry license—a number that would have been impossible before the adoption of shall-issue laws.³⁰ Of course since most defensive gun uses do not result in a shot being fired, many will never be reported in the newspapers.

Firearms in the hands of licensed, responsible, citizens who have passed a background check and met all other requirements are critical to self-defense against criminals outside the home, and are misused by license holders at a rate far below that of the general population. Repeat offenders who are responsible for most violent crime will never even attempt to get licensed, and a large percentage will be

³⁰ Clayton E. Cramer & David Burnett, *Tough Targets: When Criminals Face Armed Resistance from Citizens*, Cato Inst., Policy Analysis no. 11-12 (2012), <http://www.cato.org/pubs/wtpapers/WP-Tough-Targets.pdf>.

ineligible. The effect of a policy that prevents issuance of a carry license to almost all law-abiding citizens is to disarm and endanger the provably law-abiding, while having no effect on violent criminals.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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