

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE JOHN A. KRONSTADT
UNITED STATES DISTRICT JUDGE PRESIDING

- - -

MICHELLE FLANAGAN, ET AL.,)	
)	
PLAINTIFFS,)	
)	
VS.)	CV16-06164-JAK
)	
KAMALA HARRIS, ET AL.,)	
)	
DEFENDANTS.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
MONDAY, FEBRUARY 13, 2017; 8:30 AM

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1 LOS ANGELES, CALIFORNIA; MONDAY, FEBRUARY 13, 2017

2 8:30 AM

3 - - - - -

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5
6 THE COURT: ITEM NO. 4, CV16-06164, MICHELLE
7 FLANAGAN V. CALIFORNIA ATTORNEY GENERAL KAMALA HARRIS.

8 WOULD YOU STATE YOUR APPEARANCES, PLEASE.

9 MR. BRADY: SEAN BRADY ON BEHALF OF THE
10 PLAINTIFFS, YOUR HONOR.

11 THE COURT: GOOD MORNING, MR. BRADY.

12 MS. CHOI: GOOD MORNING, YOUR HONOR. LANA
13 CHOI ON BEHALF OF DEFENDANT SHERIFF MCDONNELL.

14 THE COURT: GOOD MORNING, MS. CHOI.

15 MR. EISENBERG: GOOD MORNING, YOUR HONOR.
16 JONATHAN EISENBERG ON BEHALF OF ATTORNEY GENERAL XAVIER
17 BECERRA.

18 THE COURT: GOOD MORNING, MR. EISENBERG.

19 WELL, WE'RE HERE ON A MOTION TO DISMISS,
20 AS WELL AS THE SCHEDULING CONFERENCE.

21 I DON'T THINK YOU ACTUALLY DISAGREE
22 MATERIALLY AS TO CERTAIN MATTERS.

23 WITH RESPECT TO THE ISSUES THAT THE
24 NINTH CIRCUIT ADDRESSED AND DECIDED IN PERUTA, THEY'RE
25 NOT GOING TO BE RELITIGATED HERE. THERE'S NO BASIS TO

1 DO SO.

2 AND THAT IS -- IN PERUTA, THE NINTH
3 CIRCUIT UPHELD THE CONCEALED CARRY STATUTE.

4 TO THE EXTENT THAT THERE IS NOW AN EFFORT
5 BY PLAINTIFFS TO CHALLENGE THE OPEN CARRY STATUTE, IT
6 RAISES DIFFERENT ISSUES TO THE -- INASMUCH AS -- WELL,
7 IT RAISES DIFFERENT ISSUES.

8 TO THE EXTENT THAT IT IS RELEVANT IN THE
9 ANALYSIS OF THE OPEN CARRY STATUTE, THAT THE CONCEALED
10 CARRY STATUTE IS IN PLACE AND HAS BEEN -- THE
11 CONSTITUTIONAL CHALLENGE TO IT FAILED, THAT MAY BE
12 RELEVANT. BUT OTHER THAN THAT, THERE WOULD NOT BE
13 RELITIGATION OF THAT ISSUE.

14 THE OPEN CARRY STATUTE PERMITS THE
15 SHERIFF AND COUNTIES WITH POPULATIONS OF LESS THAN
16 200,000 PEOPLE TO ISSUE PERMITS TO CARRY A FIREARM.

17 THAT DOESN'T APPLY TO LOS ANGELES;
18 CORRECT?

19 THE COUNTY, IT'S UNDISPUTED THAT IT'S
20 GREATER THAN 200,000?

21 MR. BRADY: CORRECT, YOUR HONOR.

22 THE COURT: ACCORDINGLY, I DON'T THINK THERE'S
23 A BASIS FOR THE CLAIM AGAINST THE COUNTY OF
24 LOS ANGELES AND THE SHERIFF.

25 MR. BRADY, I'LL HEAR FROM YOU ON THAT.

1 DO YOU CONTEND THAT THERE REMAINS A CLAIM
2 AGAINST THE SHERIFF IF THE SHERIFF LACKS JURISDICTION
3 TO ISSUE AN OPEN CARRY PERMIT?

4 MR. BRADY: THERE IS TO THE EXTENT THAT --
5 FIRST, JUST TO CLARIFY SO I KNOW WHERE WE'RE AT, YOUR
6 HONOR. ARE YOU ACCEPTING PLAINTIFF'S POSITION THAT
7 THESE ARE TWO SEPARATE CLAIMS? THAT THERE'S AN OPEN
8 CARRY AND A CONCEALED CARRY CLAIM? AND THAT, THUS --

9 THE COURT: IN THIS CASE?

10 MR. BRADY: YES.

11 THE COURT: NO.

12 THE ONLY VIABLE CLAIM HERE CONCERNS A
13 CHALLENGE TO THE OPEN CARRY STATUTE.

14 MR. BRADY: CORRECT.

15 SO YOU UNDERSTAND, PLAINTIFF'S POSITION
16 IS THAT WE'RE CHALLENGING THE STATE'S SCHEME IN ITS
17 ENTIRETY.

18 THE COURT: BUT THE NINTH CIRCUIT HAS ALREADY
19 REJECTED THE CHALLENGE TO THE CLOSED CARRY. THAT'S NOT
20 GOING TO BE RELITIGATED HERE, AS I SAID A MOMENT AGO.

21 FACTUALLY, TO THE EXTENT THAT THERE IS A
22 CONCEALED CARRY STATUTE IN PLACE, AS I SAID EARLIER,
23 THAT HAS BEEN UPHELD AS CONSTITUTIONAL, NOTWITHSTANDING
24 THE SECOND AMENDMENT CHALLENGE. AND THAT'S A FACT, BUT
25 THAT'S NOT A LEGAL ISSUE.

1 MR. BRADY: CORRECT.

2 AND I JUST WANT TO CLARIFY WHAT IS A
3 LEGAL ISSUE IS THAT, PLAINTIFFS ARE NOT SEEKING TO
4 RELITIGATE A CONCEALED CARRY CHALLENGE FOR WHETHER IT
5 WAS ACCURATE OR NOT. PLAINTIFFS -- AND THE PERUTA
6 MATTER -- AND I CAN SPEAK TO THAT BECAUSE I WAS THEIR
7 COUNSEL.

8 EVEN THOUGH THEY FRAMED -- WE FRAMED OUR
9 CLAIM IN PERUTA IN A WAY SEEKING TO CHALLENGE THE
10 ENTIRETY OF CALIFORNIA SCHEME AND SEEKING THE REMEDY OF
11 A CONCEALED WEAPON PERMIT, THE FACT THAT THE PLAINTIFFS
12 IN PERUTA WERE ONLY SEEKING A CONCEALED WEAPON PERMIT,
13 THE NINTH CIRCUIT EN BANC PANEL CONSTRUED THAT AS
14 SOLELY SEEKING -- MAKING A CLAIM FOR A RIGHT TO
15 CONCEALED CARRY.

16 HERE, THAT IS NO LONGER THE CASE.

17 THE PLAINTIFFS, NOW WE ARE SEEKING A
18 RIGHT TO CARRY IN SOME MANNER. AND THAT IS BECAUSE
19 THERE IS A BAN, WHETHER IT BE OPEN CARRY, CONCEALED
20 CARRY, ALL OF IT --

21 THE COURT: WHAT REMEDY -- IF YOU WERE
22 SUCCESSFUL ON THE MERITS HERE, WHAT REMEDY COULD YOU
23 OBTAIN FROM THE SHERIFF?

24 MR. BRADY: IT WOULD BE -- I DON'T THINK WE
25 CAN HAVE A REMEDY WITHOUT THE SHERIFF. AND THIS IS --

1 THE COURT: WHAT REMEDY DO YOU SEEK FROM THE
2 SHERIFF THAT IS PERMITTED GIVEN THAT YOUR CHALLENGE IS
3 TO THE OPEN CARRY LAW?

4 MR. BRADY: THE REMEDY, I BELIEVE, WOULD BE
5 THE DECISION OF THE STATE TO DETERMINE WHETHER THEY
6 WANT TO PROVIDE OPEN CARRY OR COMPEL THE SHERIFF TO
7 ISSUE.

8 I AGREE WITH YOUR HONOR THAT PERUTA BINDS
9 THIS COURT --

10 THE COURT: I DON'T UNDERSTAND WHAT YOU JUST
11 SAID.

12 IF THIS CASE WENT TO JUDGMENT AND THE
13 SHERIFF -- THE COUNTY OF LOS ANGELES OR THE SHERIFF
14 REMAINED A DEFENDANT, WHAT RELIEF COULD YOU -- WHAT
15 RELIEF WOULD YOU BE SEEKING AGAINST THE SHERIFF?

16 MR. BRADY: THAT EITHER THE SHERIFF OR THE
17 STATE OF CALIFORNIA PROVIDE SOME OUTLET FOR CARRY TO
18 THE PLAINTIFFS.

19 AND, YOUR HONOR, I --

20 THE COURT: INASMUCH AS PERUTA HAS RESOLVED
21 THE ISSUE OF CONCEALED CARRY, AND INASMUCH AS STATE LAW
22 DOESN'T PERMIT THE SHERIFF ANY JURISDICTION OVER OPEN
23 CARRY, WHAT RELIEF COULD YOU OBTAIN FROM THE SHERIFF IN
24 THIS CASE?

25 MR. BRADY: THE SHERIFF COULD DECIDE --

1 BETWEEN THE STATE AND THE SHERIFF, THE SHERIFF COULD
2 ISSUE CONCEALED WEAPON PERMITS.

3 NOW YOUR HONOR CANNOT COMPEL THE SHERIFF
4 TO DO THAT. YOUR HONOR COULD COMPEL THE STATE TO
5 EITHER ALLOW OPEN CARRY OR THE SHERIFF TO ISSUE
6 PERMITS.

7 SO I UNDERSTAND YOUR HONOR'S --

8 THE COURT: I DON'T REALLY UNDERSTAND THE
9 JUSTICIABLE ISSUE AS TO THE SHERIFF.

10 MR. BRADY: THE SHERIFF HAS BEEN MADE A STATE
11 ACTOR VIA STATE LAW TO BE PART OF THE CARRY SCHEME.

12 THIS, UNFORTUNATELY, YOUR HONOR,
13 PLAINTIFFS -- TRUST ME, PLAINTIFFS WISH IT WEREN'T THE
14 CASE, AND THAT THIS WAS JUST AS CLEAN AS THE ILLINOIS
15 CASE IN THE SEVENTH CIRCUIT WHERE IT WAS A TOTAL BAN,
16 AND WE CAN JUST DEAL WITH THAT. UNFORTUNATELY,
17 CALIFORNIA LAW IS NOT THAT CLEAR. AND WITH ALL DUE
18 RESPECT, YOUR HONOR, THAT'S NOT THE PLAINTIFF'S FAULT.
19 WE TAKE THESE THINGS AS WE --

20 THE COURT: BUT I DON'T UNDERSTAND YET WHAT
21 RELIEF YOU'RE GOING TO SEEK -- WHAT COURT ORDER WOULD
22 YOU CONTEND WOULD BE APPROPRIATE IN THIS ACTION AGAINST
23 THE SHERIFF OF LOS ANGELES?

24 MR. BRADY: THAT, AS A STATE ACTOR -- BECAUSE
25 HE IS A STATE ACTOR IN THIS REGARD. THAT THE STATE

1 DETERMINE -- PROVIDE AN OUTLET TO CARRY, JUST AS --

2 THE COURT: HOW DOES THE SHERIFF HAVE

3 AUTHORITY TO DETERMINE STATE POLICY?

4 MR. BRADY: THE SHERIFF HAS ALL THE AUTHORITY

5 UNDER STATE LAW AS HE HAS BEEN DELEGATED THAT

6 AUTHORITY --

7 THE COURT: BUT HE DOESN'T HAVE AUTHORITY TO

8 ISSUE AN OPEN CARRY PERMIT AS A MATTER OF STATE LAW.

9 MR. BRADY: CORRECT.

10 BUT HERE'S WHERE I THINK THE DISCONNECT

11 IS, YOUR HONOR, IF I MAY?

12 IF THE SHERIFF WERE TO ISSUE CONCEALED

13 WEAPON PERMITS, EVEN THOUGH HE CANNOT BE COMPELLED TO,

14 IF HE WERE, I DON'T THINK THAT THE PLAINTIFFS WOULD

15 HAVE STANDING. I BELIEVE THAT THEIR SECOND AMENDMENT

16 RIGHT TO --

17 THE COURT: SPEAKING OF "STANDING," HAVE THE

18 INDIVIDUAL PLAINTIFFS APPLIED FOR AN OPEN CARRY PERMIT?

19 MR. BRADY: NO, BECAUSE THEY CANNOT.

20 THE COURT: THEY CANNOT APPLY FOR ONE?

21 MR. BRADY: NO. THERE IS NOT ONE AVAILABLE

22 UNDER STATE LAW IN THE COUNTY OF LOS ANGELES.

23 THE COURT: BUT THEY CAN APPLY TO THE STATE OF

24 CALIFORNIA FOR ONE; CORRECT?

25 MR. BRADY: NO.

1 THE ONLY WAY TO GET AN OPEN CARRY PERMIT
2 IS IN ANOTHER COUNTY WITH LESS THAN 200- OR 250,000
3 RESIDENTS.

4 THE COURT: UNDER CALIFORNIA LAW, CERTAIN
5 PERSONS MAY GET OPEN CARRY PERMITS; CORRECT?

6 MR. BRADY: THAT'S CORRECT.

7 THE COURT: IF THEY'RE A PEACE OFFICER, IF
8 THEY'RE -- FIT INTO SPECIFIC -- CERTAIN CATEGORIES BY
9 THE STATUTE; CORRECT?

10 MR. BRADY: NO, YOUR HONOR. A NORMAL
11 RESIDENT, A STANDARD NON-PEACE OFFICER CAN OBTAIN,
12 UNDER CALIFORNIA STATE LAW, AN OPEN CARRY PERMIT IF
13 THEY RESIDE IN A COUNTY WHERE THE POPULATION IS LESS
14 THAN 200,000 PEOPLE. THAT'S WHERE THE EQUAL PROTECTION
15 CLAIM COMES IN. IN THAT, A PERSON IN -- I DON'T HAVE
16 THE --

17 THE COURT: SO YOU'RE SAYING THAT A PERSON WHO
18 RESIDES IN A COUNTY OF LARGER THAN 200,000 IS NOT
19 PERMITTED TO HAVE AN OPEN CARRY EVEN, FOR EXAMPLE, IF
20 HE OR SHE IS A SECURITY GUARD?

21 MR. BRADY: OH, SURE, THERE ARE EXCEPTIONS FOR
22 SECURITY GUARDS. WE'RE TALKING ABOUT NON-PEACE
23 OFFICER, NON-SPECIALIZED GROUPS. THAT'S CORRECT.

24 THE COURT: AND IF A PERSON SEEKS A -- IF A
25 PERSON BELIEVES HE OR SHE IS IN A CATEGORY THAT'S

1 PERMITTED AN OPEN CARRY IN A COUNTY OF MORE THAN
2 200,000, AND BECAUSE HE OR SHE FITS THE -- MEETS THE
3 STATUTORY DEFINITION OR REQUIREMENTS, DOES HE OR SHE
4 HAVE TO APPLY FOR A PERMIT?

5 MR. BRADY: YES.

6 SO IN, SAY -- I'M GOING TO GUESS ALPINE
7 COUNTY FITS THIS -- AND MAYBE NOT ANYMORE. BUT IN
8 ALPINE COUNTY, IF OUR PLAINTIFFS WERE RESIDENTS OF
9 ALPINE COUNTY, THEY GO TO THE SHERIFF AND SAY, "MAY I
10 GET AN OPEN CARRY PERMIT?" THE SHERIFF WOULD SAY
11 EITHER "OPEN" OR "CONCEALED." IT WOULD BE AT THE
12 DISCRETION OF THE SHERIFF. THE STATE LAW GIVES
13 SHERIFFS VAST DISCRETION IN THESE REGARDS.

14 THE COURT: I UNDERSTAND THAT AS TO OPEN CARRY
15 IN A COUNTY OF LESS THAN 200,000.

16 MY QUESTION IS AS TO THE STATE. IF ONE
17 IS SEEKING TO GET A PERMIT TO CARRY OPEN -- STATE OPEN
18 CARRY PERMIT - I.E., ONE ISSUED TO A PERSON WHO RESIDES
19 IN A COUNTY OF MORE THAN 200,000, THAT REQUEST FOR
20 PERMIT WOULD BE MADE TO THE STATE OF CALIFORNIA;
21 CORRECT?

22 MR. BRADY: IT CANNOT BE MADE. THERE'S NO --
23 NOTHING --

24 THE COURT: IT CAN BE MADE WITH RESPECT TO
25 THOSE WHO FIT THE STATUTORY DEFINITION; CORRECT?

1 MR. BRADY: AS FAR AS A PEACE OFFICER? YES.
2 A PEACE OFFICER OR A SECURITY GUARD OR SOMETHING OF
3 THAT NATURE? YES, YOUR HONOR.

4 THE COURT: OKAY. AND YOUR POSITION IS THAT,
5 IN ORDER TO HAVE STANDING TO CHALLENGE THE STATE
6 STATUTE, YOUR CLIENTS DON'T HAVE TO APPLY FOR A PERMIT
7 AND HAVE IT DENIED BECAUSE THEY DON'T QUALIFY UNDER THE
8 STATUTE?

9 MR. BRADY: THAT IS CORRECT, YOUR HONOR. I
10 MEAN, IT'S A FACIAL -- AS A FACIAL MATTER, THEY'RE --

11 THE COURT: ALL RIGHT.

12 MR. BRADY: -- UNABLE TO DO SO.

13 THE COURT: PUTTING THAT ASIDE, I HAVE NOT
14 HEARD ANYTHING YET THAT SUGGESTS TO ME THERE'S ANY
15 CLAIM THAT CAN BE MADE, AT THIS POINT, AGAINST THE
16 SHERIFF BECAUSE THE CHALLENGE HERE IS TO THE STATE LAW.
17 AND THERE'S NO BASIS I'VE HEARD THAT THE SHERIFF HAS
18 JURISDICTION OVER STATE LAW. THE LEGISLATURE AND THE
19 GOVERNOR DO.

20 MR. BRADY: INDEED, YOUR HONOR.

21 BUT BECAUSE THE STATE HAS GIVEN THE
22 SHERIFF THIS DISCRETION -- AND AS I --

23 THE COURT: THAT'S WITH RESPECT TO CONCEALED
24 CARRY.

25 MR. BRADY: I GUESS I WOULD PUT IT THIS WAY,

1 YOUR HONOR, FOR CONTEXT TO UNDERSTAND WHERE WE'RE
2 COMING FROM: IF THE SHERIFF WERE TO ISSUE CONCEALED
3 WEAPON PERMITS, AS HE'S ALLOWED TO DO, THEN PLAINTIFFS
4 WOULD BE MADE WHOLE; CORRECT?

5 THEY WOULD -- IN OTHER WORDS, IF THEY HAD
6 PERMITS AND THEY WERE COMING TO YOUR HONOR SAYING, "NO,
7 WE WANT TO OPEN CARRY," YOUR HONOR WOULD, I BELIEVE, BE
8 ABLE TO SAY, "NO, YOUR SECOND AMENDMENT RIGHTS ARE
9 INTACT. YOU HAVE A CONCEALED WEAPON PERMIT."

10 AND I THINK THAT THE INVERSE IS TRUE AS
11 WELL. THAT THIS COURT IS -- WOULD BE UNABLE TO PROVIDE
12 THE RELIEF THAT PLAINTIFFS SEEK WITHOUT THE SHERIFF
13 BECAUSE HE IS A NECESSARY COMPONENT.

14 IN OTHER WORDS, WE SPENT EIGHT YEARS
15 LITIGATING --

16 THE COURT: I DON'T UNDERSTAND. I DON'T THINK
17 I AGREE WITH YOU.

18 I DON'T UNDERSTAND WHAT JUDGMENT COULD BE
19 ENTERED IN THIS CASE REQUIRING THE SHERIFF -- WHAT
20 WOULD YOU BE REQUIRING THE SHERIFF TO DO?

21 AND WITH RESPECT TO YOUR PRIOR STATEMENT,
22 HAVE YOUR CLIENTS APPLIED FOR CONCEALED CARRY WITHIN
23 LOS ANGELES COUNTY?

24 MR. BRADY: YES, YOUR HONOR. THEY HAVE. THE
25 INDIVIDUALS HAVE.

1 THE COURT: AND THEY'VE BEEN DENIED?

2 MR. BRADY: YES.

3 THE COURT: SO THEY ALREADY HAVE THE BASIS TO
4 SAY WHAT YOU'RE SAYING, WHICH IS, THAT'S NOT A SOLUTION
5 TO OUR PROBLEM. WE WISH TO CHALLENGE THE OPEN CARRY
6 PROVISION.

7 MR. BRADY: HERE'S THE CONTEXT OF THIS THING,
8 YOUR HONOR: WE SPENT EIGHT YEARS LITIGATING THE PERUTA
9 MATTER UNDER THE BELIEF THAT WE WERE LITIGATING A
10 CHALLENGE TO THE ENTIRE CALIFORNIA SCHEME AND SAYING,
11 ALL WE'RE ASKING FOR IS JUST AN INTERPRETATION OF THE
12 GOOD CAUSE REQUIREMENT THAT SELF-DEFENSE MUST BE
13 ACCEPTED UNDER THE DOCTRINE OF CONSTITUTIONAL AVOIDANCE
14 TO NOT DISRUPT THE ENTIRE SCHEME.

15 UNFORTUNATELY FOR THE PLAINTIFFS IN THE
16 PERUTA MATTER, THE NINTH CIRCUIT EN BANC PANEL REJECTED
17 OUR POSITION THAT WE WERE SEEKING JUST TO CARRY IN SOME
18 MANNER AND SAID, "NO, YOU'RE ONLY SEEKING TO CARRY IN A
19 CONCEALED MANNER, AND YOU DO NOT HAVE A RIGHT TO CARRY
20 IN JUST A CONCEALED MANNER."

21 SO THE PROBLEM NOW IS, DO WE GET BOXED IN
22 ON THE OTHER SIDE JUST GOING OPEN CARRY? AND THEN COME
23 TO FIND OUT THAT YOU'RE NOT -- CAN'T -- YOU CAN'T SAY,
24 STATE A CLAIM FOR JUST OPEN CARRY. YOU HAVE TO ASK FOR
25 SOME FORM OF CARRY, WHICH IS --

1 THE COURT: AS I STATED, AS A FACTUAL MATTER,
2 IT'S BEEN DETERMINED -- AS I SAID AT THE OUTSET, IT'S
3 BEEN DETERMINED IN PERUTA AS TO THE VALIDITY OF THE
4 CLOSED -- THE CONCEALED CARRY IS VALID UNDER THE SECOND
5 AMENDMENT. YOU JUST REPRESENTED THAT EACH OF THESE
6 PLAINTIFFS HAS APPLIED FOR AND BEEN DENIED A PERMIT.
7 SO THEY'RE NOW SEEKING TO HAVE A RESOLUTION THAT THEY
8 CAN OPEN CARRY BECAUSE THE STATE LAW VIOLATES A SECOND
9 AMENDMENT.

10 MR. BRADY: OR THEY WOULD TAKE A CONCEALED
11 WEAPON PERMIT.

12 I THINK WHERE THE DISRUPT IS, THE CLAIM
13 VERSUS THE REMEDY. YOUR HONOR COULD NOT, UNDER PERUTA,
14 COMPEL THE SHERIFF TO ISSUE CONCEALED WEAPON PERMITS.
15 WE'RE ALL IN AGREEMENT THERE. UNDER PERUTA, THAT IS
16 NOT -- THERE'S NO SECOND AMENDMENT REQUIREMENT THAT HE
17 DO THAT.

18 THERE IS, HOWEVER, IF THE STATE AND THE
19 SHERIFF AGREED THAT CONCEALED WEAPON PERMITS WOULD BE
20 THE OUTLET FOR EXERCISING THE RIGHT TO BEAR ARMS --
21 WHICH I THINK, AT THE END OF THE DAY, WILL BE THE CASE
22 BECAUSE THAT'S THE OBVIOUS PREFERENCE THAT THE STATE OF
23 CALIFORNIA HAS CHOSEN FOR PEOPLE CARRYING --

24 THE COURT: THAT WOULD REQUIRE AN AMENDMENT TO
25 THE STATUTE; CORRECT?

1 MR. BRADY: NO.

2 THE COURT: IT WOULDN'T?

3 MR. BRADY: NO.

4 THE COURT: 200,000 IS NOT STATUTORY?

5 MR. BRADY: WELL, THAT'S THE OPEN CARRY
6 DISTINCTION.

7 I'M SAYING THAT IF THEY WERE ISSUED
8 CONCEALED WEAPON PERMITS, THEY WOULD --

9 THE COURT: I DON'T THINK WE'RE GETTING
10 ANYWHERE.

11 I DON'T THINK THERE'S ANY REMEDY THAT YOU
12 HAVE AGAINST THE SHERIFF IN THIS MATTER. I THINK
13 YOU'RE CHALLENGING A STATE STATUTE AND A STATE SYSTEM.
14 AND THE STATE SYSTEM LIMITS THE AUTHORITY OF SHERIFFS
15 IN COUNTIES OF MORE THAN 200,000 TO ISSUE AN OPEN CARRY
16 PERMIT. AND THAT'S PART OF YOUR CHALLENGE.

17 AND PART OF YOUR CHALLENGE IS THAT, IN
18 PERUTA, CONCEALED CARRY WAS UPHELD. AND, ACCORDINGLY,
19 GIVEN THAT YOUR CLIENTS HAVE BEEN SOUGHT AND BEEN
20 DENIED CLOSED CONCEALED CARRY, THAT'S NOT A REMEDY TO
21 THEM.

22 I DON'T SEE WHAT FURTHER REMEDY THERE IS
23 AGAINST THE SHERIFF, AS OPPOSED TO, FOR EXAMPLE, IF THE
24 STATUTE WERE AMENDED AND THE SHERIFF WAS GIVEN
25 AUTHORITY TO DO SOMETHING WITH RESPECT TO OPEN CARRY,

1 AND HE ALLEGEDLY DIDN'T DO WHAT HE SHOULD HAVE DONE,
2 THEN YOU COULD CHALLENGE HIS CONDUCT. BUT I DON'T SEE
3 IT OTHERWISE. I DON'T.

4 AM I MISSING SOMETHING, MR. EISENBERG --
5 EXCUSE ME, MS. CHOI?

6 MS. CHOI: NO, YOUR HONOR. I THINK YOU'RE
7 COMPLETELY CORRECT. THE SHERIFF HAS NO POLICIES ON
8 OPEN CARRY. OPEN CARRY IN L.A. COUNTY IS PROHIBITED BY
9 STATE LAW.

10 I THINK THAT THE ONLY REASON THAT THE
11 COUNTY HAS BEEN BROUGHT INTO THIS CASE IS IN AN EFFORT
12 TO RELITIGATE PERUTA, WHICH YOU HAVE ALREADY STATED IS
13 NOT GOING TO HAPPEN.

14 THE COURT: I DON'T KNOW ABOUT THAT, BUT I --
15 I DON'T UNDERSTAND -- I DON'T SEE, AS I'VE SAID
16 REPEATEDLY, WHAT JUDGMENT COULD BE ENTERED DIRECTING
17 THE SHERIFF TO TAKE ACTION -- REQUIRING ACTION BY THE
18 SHERIFF WITH RESPECT TO THE OPEN CARRY STATUTE THAT
19 YOU'RE CHALLENGING.

20 MR. BRADY: YOUR HONOR, I BELIEVE THAT YOU
21 WOULD NEED TO TAKE A LOOK AT WHAT THE SEVENTH CIRCUIT
22 DID IN ILLINOIS. IT WAS MUCH EASIER IN THAT INSTANCE
23 BECAUSE IT WAS A CLEAR CUT COMPLETE BAN WITH ONE
24 STATUTE. SO IT WAS EASY FOR THE COURT TO FASHION A
25 REMEDY.

1 BUT, HERE, UNFORTUNATELY, WE DON'T HAVE
2 THAT EASY OF A SCHEME BECAUSE THE STATE OF CALIFORNIA
3 HAS DECIDED TO BREAK THINGS UP AND --

4 THE COURT: THAT'S EXACTLY WHAT -- I AGREE
5 WITH YOU, WHAT YOU JUST SAID, "THE STATE OF CALIFORNIA
6 HAS."

7 MR. BRADY: CORRECT.

8 THE COURT: IT'S AGAINST THE STATE OF
9 CALIFORNIA THAT YOU'RE SEEKING TO CHALLENGE AND HAVE AN
10 ORDER MADE THAT WOULD SAY THAT WHAT THE STATE OF
11 CALIFORNIA HAS DONE IS NOT PERMITTED UNDER THE SECOND
12 AMENDMENT.

13 MR. BRADY: THAT'S CORRECT.

14 BUT THEY HAVE ALSO AUTHORIZED THE SHERIFF
15 AS A STATE ACTOR IN THIS CAPACITY TO ENGAGE IN --

16 THE COURT: ISSUE CONCEALED --

17 MR. BRADY: -- ISSUING THE PERMITS TO DO THIS.
18 AND HE HAS EXERCISED THAT DISCRETION TO REFUSE.

19 AND SO ALL I'M SAYING IS, IF HE WERE TO
20 NOT REFUSE, THEN PLAINTIFFS WOULD NOT HAVE AN OPEN
21 CARRY CHALLENGE EITHER.

22 IN OTHER WORDS, IF THEY WERE GIVEN THE
23 CONCEALED WEAPON PERMITS --

24 THE COURT: BUT HE DOESN'T HAVE AUTHORITY TO
25 DO THAT BECAUSE THE STATUTE DOESN'T ALLOW HIM TO DO

1 THAT --

2 MR. BRADY: SURE, HE DOES. IF THE SHERIFF
3 WANTED TO ISSUE AN OPEN --

4 THE COURT: IN PERUTA, YOU CHALLENGED THE
5 CONCEALED CARRY; CORRECT?

6 MR. BRADY: CORRECT.

7 THE COURT: WERE THE PARTIES THE SAME?

8 MR. BRADY: NO. SAN DIEGO COUNTY AND THIS IS
9 L.A. COUNTY.

10 THE SHERIFF DOES HAVE THE DISCRETION,
11 YOUR HONOR, TO ISSUE CONCEALED WEAPON PERMITS TODAY.

12 THE COURT: BUT YOU'RE NOT SEEKING IN THIS
13 CASE TO CHALLENGE THE DENIAL OF THE CONCEALED WEAPONS
14 PERMITS, ARE YOU?

15 MR. BRADY: NO.

16 THE PLAINTIFFS HERE ARE SOLELY SEEKING
17 SOME WAY TO CARRY, WHETHER THAT'S OPEN OR CONCEALED.
18 THAT'S UP TO THE GOVERNMENT --

19 THE COURT: NO, IT'S UP TO YOUR COMPLAINT. IF
20 YOU'RE CONTENDING THAT THE CONCEALED -- EXCUSE ME.

21 YOU CANNOT GET AN OPEN CARRY FROM THE
22 SHERIFF.

23 AND IF YOU CONTEND THAT THE SHERIFF
24 IMPROPERLY DENIED CONCEALED CARRY, THEN DON'T YOU HAVE
25 TO PURSUE THAT CLAIM AND SAY THE SHERIFF IMPROPERLY

1 DENIED OUR PERMITS BASED ON THE STANDARDS OF PERUTA?

2 MR. BRADY: THAT'S WHAT I'M TRYING TO DO HERE,
3 YOUR HONOR. BUT THERE SEEMS TO BE A MISUNDERSTANDING,
4 WHICH IS UNDERSTANDABLE --

5 THE COURT: SO YOU'RE CHALLENGING MORE THAN
6 THE STATE STATUTE? YOU'RE CHALLENGING THE SHERIFF'S
7 DECISION TO DENY CONCEALED PERMITS TO THESE INDIVIDUAL
8 PLAINTIFFS?

9 MR. BRADY: CORRECT.

10 THE COURT: AND YOU HAVE -- OKAY.

11 MR. BRADY: CORRECT, AS A WHOLE.

12 THE COURT: THAT'S NOT AS A WHOLE. THAT'S NOT
13 THE QUESTION.

14 I'M NOT GOING TO AGREE WITH YOU AS A
15 WHOLE. I THINK WE'VE BEEN BACK AND FORTH ON THIS. I
16 DON'T AGREE WITH YOU AT ALL. OKAY?

17 THE NINTH CIRCUIT HAS DETERMINED THAT THE
18 CONCEALED CARRY STATUTE DOESN'T VIOLATE THE SECOND
19 AMENDMENT. THAT IS NOT TO BE RELITIGATED.

20 TO THE EXTENT THAT YOU'RE SEEKING TO
21 CHALLENGE THE CALIFORNIA STATUTE ON OPEN CARRY, THAT'S
22 A STATE ACTOR, THE STATE STATUTE, THE STATE HAS MADE A
23 DECISION, AND THAT'S THE ONLY APPROPRIATE DEFENDANT.

24 NOW, TO THE EXTENT THAT YOU'RE SEEKING TO
25 CHALLENGE THE DETERMINATION BY THE SHERIFF NOT TO ISSUE

1 CONCEALED CARRIES TO THESE INDIVIDUALS BASED ON FACTS
2 THAT GO BEYOND PERUTA, I UNDERSTAND THAT THAT MIGHT BE
3 A CLAIM.

4 IS THAT WHAT YOU'RE DOING?

5 MR. BRADY: WE ARE SAYING THAT EITHER THEY
6 NEED TO BE ISSUED THESE PERMITS OR THEY NEED TO BE
7 ALLOWED TO CARRY OPENLY.

8 THE COURT: THAT'S NOT MY QUESTION.

9 MY QUESTION IS PRETTY SIMPLE. DO YOU
10 CONTEND THAT THERE'S A -- THAT THERE'S JURISDICTION
11 HERE IN THIS CASE TO DETERMINE WHETHER THE SHERIFF
12 IMPROPERLY DECLINED TO ISSUE CONCEALED PERMITS TO THE
13 INDIVIDUAL PLAINTIFFS?

14 MR. BRADY: YES, YOUR HONOR. UNDER --

15 THE COURT: OKAY.

16 MR. BRADY: BUT, UNFORTUNATELY, PERUTA WOULD
17 PRECLUDE YOUR HONOR FROM FORCING THE SHERIFF TO ISSUE
18 THOSE PERMITS.

19 THE COURT: WHAT IF THE SHERIFF HAS DISCRETION
20 TO ISSUE CONCEALED PERMITS -- WHICH THE SHERIFF DOES;
21 CORRECT?

22 MR. BRADY: CORRECT.

23 THE COURT: AND THE SHERIFF -- DOES THE
24 SHERIFF HAVE STANDARDS THAT THE SHERIFF USES IN ISSUING
25 CONCEALED PERMITS?

1 MS. CHOI: YES. PER THE CALIFORNIA STATUTE,
2 THE SHERIFF MAY ISSUE CONCEALED CARRY PERMITS AFTER A
3 SHOWING OF GOOD CAUSE. IT'S LEFT TO THE INDIVIDUAL
4 COUNTY SHERIFFS TO DETERMINE WHAT GOOD CAUSE IS.

5 THE COURT: THAT'S FINE.

6 SO IF THESE INDIVIDUAL PLAINTIFFS HAVE
7 APPLIED FOR CONCEALED CARRY PERMITS, AND THE SHERIFF
8 HAS DENIED THEM BASED ON A DETERMINATION, APPARENTLY,
9 THAT THE SHERIFF BELIEVED THERE WAS NOT GOOD CAUSE, IS
10 THERE A MEANS FOR JUDICIALLY CHALLENGING THE SHERIFF'S
11 DETERMINATION?

12 MS. CHOI: YES, THERE IS, I BELIEVE. THERE
13 ARE APPEALS AVAILABLE IN STATE COURT --

14 THE COURT: OKAY. SO THAT'S --

15 MS. CHOI: -- TO REVIEW THAT DECISION.

16 MR. BRADY: THAT'S UNDER STATE LAW, YOUR
17 HONOR.

18 WHAT WE ARE ALLEGING IS THAT THERE'S A
19 RIGHT TO BEAR ARMS IN SOME MANNER. AND THE STATE OF
20 CALIFORNIA HAS FASHIONED THE SCHEME THAT PRECLUDES BOTH
21 THE OPEN CARRY AND THE CONCEALED CARRY.

22 THE COURT: WE'RE GOING TO HAVE TO AGREE TO
23 DISAGREE. I DON'T THINK YOU HAVE PERSUADED ME. WE CAN
24 AGREE TO DISAGREE. AND YOU HAVE REPEATED THE SAME
25 THINGS A LOT.

1 BUT THE POINT IS THAT, YOU HAVE NOT YET
2 IDENTIFIED ANY REMEDY THAT YOU'RE SEEKING HERE AGAINST
3 THE SHERIFF. AND THEN WHEN I ASKED WHETHER YOU WERE
4 SEEKING TO HAVE THE SHERIFF'S DECISION TO DENY
5 CONCEALED CARRY PERMITS TO THE INDIVIDUAL PLAINTIFFS,
6 YOU SAID, YES. BUT, APPARENTLY, THERE'S A DIFFERENT
7 PROCESS FOR DOING THAT.

8 MR. BRADY: WELL, THERE IS A STATE COURT
9 PROCESS FOR IF THEY DON'T ADHERE TO, BASICALLY, THE
10 ADMINISTRATIVE. BUT HE ADHERED TO THE ADMINISTRATIVE
11 WAY OF DOING THINGS. THAT'S NOT --

12 THE COURT: THEN THIS CASE IS ABOUT THE STATE
13 OPEN CARRY LAW AND THE REMEDIES AGAINST THE STATE.

14 MR. BRADY: IT IS INDEED, YOUR HONOR.

15 THE COURT: THE SHERIFF IS NOT A NECESSARY
16 PARTY. I DON'T SEE IT. I DON'T SEE IT. YOU'RE
17 CHALLENGING A STATE STATUTE. AND THE STATE STATUTE
18 REGULATES, AMONG OTHER THINGS, SHERIFFS. A SHERIFF IN
19 A COUNTY OF MORE THAN 200,000 CANNOT ISSUE AN OPEN
20 CARRY PERMIT. A SHERIFF IN A COUNTY OF LESS THAN
21 200,000 CAN. EACH IS CONTROLLED BY STATE LAW.

22 MR. BRADY: OKAY.

23 THE COURT: YOU'RE CHALLENGING THAT AS PART OF
24 THE CHALLENGE HERE. AND THAT'S FINE, BUT THE SHERIFFS
25 AREN'T THE DECISION-MAKERS. THE STATE IS.

1 MR. BRADY: WELL, THE SHERIFFS ARE THE
2 DECISION-MAKERS UNDER STATE LAW.

3 THE COURT: THEY'RE NOT THE DECISION-MAKERS AS
4 TO OPEN CARRY.

5 MR. BRADY: CORRECT.

6 THE COURT: AND THAT'S WHAT YOU'RE HERE TO
7 CHALLENGE; RIGHT?

8 MR. BRADY: WE ARE HERE TO CHALLENGE -- SURE.
9 IF THAT'S THE REMEDY -- THE ONLY REMEDY THAT --

10 THE COURT: I DON'T SEE THE OTHER REMEDY YOU
11 HAVE. YOU HAVE SPENT, AS YOU SAID, SEVERAL YEARS
12 LITIGATING, IN PERUTA, THE CONCEALED CARRY. AND THE
13 NINTH CIRCUIT EN BANC MADE ITS RULING. JUDGE FLETCHER,
14 I BELIEVE, WROTE THE DECISION FOR THE MAJORITY. AND
15 THAT ISSUE HAS BEEN DETERMINED.

16 AND NOW YOU'RE CHALLENGING NOT THE
17 CONCEALED CARRY, THE OPEN CARRY, WHICH WAS NOT
18 ADDRESSED IN PERUTA. AND YOU'RE SAYING YOU WISH IT HAD
19 BEEN ADDRESSED, BUT IT WASN'T. SO YOU'RE NOW SEEKING
20 TO HAVE IT ADDRESSED. AND THAT'S FINE. I DON'T HAVE A
21 PROBLEM WITH THAT. AS I HAVE STATED, I DON'T THINK YOU
22 HAVE A CLAIM AGAINST THE SHERIFF. THE SHERIFF OF LOS
23 ANGELES HAS NO AUTHORITY UNDER STATE LAW TO ISSUE AN
24 OPEN CARRY OR ALLOW OPEN CARRY.

25 MR. BRADY: THAT'S CORRECT, YOUR HONOR, IF

1 YOU'RE LOOKING SOLELY AT OPEN CARRY.

2 THE COURT: I AM.

3 MR. BRADY: OKAY.

4 THE COURT: I'M LOOKING AT OPEN CARRY, AS I
5 SAID FROM THE OUTSET, IN THE CONTEXT OF PERUTA, WHICH
6 SAYS THAT CONCEALED CARRY PROCESS DOES NOT VIOLATE THE
7 SECOND AMENDMENT. SO THAT'S A FACT. IT'S PART OF THE
8 CONTEXT. IT'S PART OF THE CONTEXT HERE, BUT I DON'T
9 THINK THERE'S A LEGAL REMEDY THAT YOU HAVE, AT THIS
10 POINT, SHOWING ME YOU HAVE AGAINST THE SHERIFF OF
11 LOS ANGELES, AS OPPOSED TO THE STATE OF CALIFORNIA.

12 SO LET'S MOVE ON. IF I'M LATER PERSUADED
13 IN THE COURSE OF THESE PROCEEDINGS THAT THERE'S A
14 SEPARATE CLAIM OR A CLAIM -- A DISTINCT CLAIM AGAINST
15 THE SHERIFF OF LOS ANGELES, THEN I WOULD ALLOW YOU TO
16 PURSUE THAT.

17 ALL RIGHT. SO LET'S -- JUST ONE MOMENT.

18 WELL, DOES EACH OF YOU HAVE A COPY OF
19 YOUR RULE 16 REPORT?

20 MR. BRADY: YES.

21 MS. CHOI: YES, YOUR HONOR.

22 THE COURT: THANK YOU.

23 WITH RESPECT TO THE DATES -- HERE ARE THE
24 DATES I HAVE IN MIND, MOST OF WHICH TRACK WITH WHAT YOU
25 HAVE PROPOSED:

1 LAST DATE TO ADD PARTIES OR AMEND
2 PLEADINGS, MAY 1, 2017.

3 NON-EXPERT DISCOVERY TO BE COMPLETED BY
4 JUNE 1, 2017.

5 INITIAL EXPERT DISCLOSURE, JUNE 1, 2017.

6 REBUTTAL EXPERT DISCLOSURE, IF ANY, JUNE
7 30, 2017.

8 COMPLETE EXPERT DISCOVERY BY JULY 28,
9 2017.

10 LAST DATE TO FILE MOTIONS, JULY 31, 2017.

11 LAST DATE TO HAVE THEM HEARD, OCTOBER 23,
12 2017.

13 ANTICIPATED RULINGS BY NOVEMBER 20, 2017.

14 LAST DATE TO FILE DIRECT TESTIMONY,
15 DECEMBER 4, 2017.

16 LAST DATE TO FILE OBJECTIONS, DECEMBER 8,
17 2017.

18 ANTICIPATED RULINGS ON EVIDENTIARY
19 OBJECTIONS, DECEMBER 15, 2017.

20 COURT TRIAL, FEBRUARY 6, 2018.

21 THEN WHAT I'LL DO IS: I'LL HAVE A STATUS
22 CONFERENCE -- ORDINARILY, I DON'T HAVE FINAL PRETRIAL
23 CONFERENCES IN BENCH TRIAL MATTERS. HOWEVER, IN LIGHT
24 OF THE GAP BETWEEN THE DECEMBER 15 DATE AND FEBRUARY 6
25 DATE, I'M GOING TO -- AT THIS POINT, I'M GOING TO SET A

1 STATUS CONFERENCE FOR DECEMBER 18, 2017 AT 1:30 TO
2 DISCUSS THE TRIAL DATE TO THE EXTENT THAT THERE'S BEEN
3 AN OPPORTUNITY TO DO IT SOONER OR ANY OTHER ISSUES.

4 I'D LIKE A JOINT STATEMENT ONE WEEK
5 BEFORE THAT BY THE 11TH JUST IN TERMS OF ANY ISSUES --
6 OTHER THAN THE EVIDENTIARY OBJECTIONS TO THE
7 DECLARATIONS, ANY OTHER ISSUES THAT EITHER SIDE THINKS
8 NEED TO BE ADDRESSED PRIOR TO TRIAL. AND WE CAN
9 DISCUSS THAT.

10 SO THE PRINCIPAL CHANGE THAT I MADE TO
11 YOUR PROPOSED DATES WAS COMPLETING EXPERT DISCOVERY IN
12 ABOUT 30 DAYS AS OPPOSED SIX WEEKS -- OR SEVEN WEEKS.

13 IS THERE A REASON YOU PROPOSED TO GO FROM
14 JUNE 30 TO AUGUST 21 FOR EXPERT DISCOVERY?

15 MR. EISENBERG?

16 MR. EISENBERG: NO PARTICULAR REASON, JUST TO
17 GIVE US TIME TO TAKE DEPOSITIONS.

18 THE COURT: USUALLY 30 DAYS IS SUFFICIENT IF
19 THERE'S NOT THAT MANY EXPERTS. WE'RE TALKING ABOUT
20 DEPOSITIONS.

21 MR. EISENBERG: WE JUST FIGURED IT WAS SUMMER
22 TIME. THERE MIGHT BE MULTIPLE EXPERTS IN THE CASE. SO
23 WE JUST PICKED THOSE DATES.

24 THE COURT: MR. BRADY?

25 MR. BRADY: YOUR HONOR, I SUBBED IN ON THIS

1 CASE. I DID NOT PREPARE THIS REPORT. I DID
2 FAMILIARIZE MYSELF WITH THE DATES, BUT I'M NOT PREPARED
3 TO ANSWER THAT SPECIFICALLY.

4 I DON'T ANTICIPATE THERE BEING MANY
5 EXPERTS. THIS IS A QUESTION OF LAW AT THE END OF THE
6 DAY. THERE MIGHT BE ONE OR TWO, BUT --

7 THE COURT: WE AGREE ON THAT. THERE'S A
8 QUESTION OF LAW HERE.

9 I'M GOING TO ADHERE TO THE DATES THAT
10 I'VE SET UNLESS ANY PARTICULAR DATE DOESN'T WORK WITH A
11 SCHEDULE THAT ANY COUNSEL HAS.

12 HEARING NONE, I'LL ADOPT THESE DATES.

13 MR. EISENBERG: ACTUALLY, YOUR HONOR, WHAT DAY
14 OF THE WEEK IS THE 31ST? I MAY NOT BE AVAILABLE THEN.

15 THE COURT: THE 31ST OF -- WHICH DATE ARE YOU
16 REFERRING TO?

17 MR. EISENBERG: LAST DATE TO FILE MOTIONS.

18 THE COURT: JULY 31? IT'S A MONDAY.

19 MR. EISENBERG: I WILL NOT BE IN TOWN. I HAVE
20 A PREVIOUSLY-SCHEDULED VACATION.

21 THE COURT: WHEN ARE YOU LEAVING?

22 MR. EISENBERG: THAT SATURDAY, WHICH WOULD BE
23 THE 29TH.

24 THE COURT: I MEAN, YOU'RE NOT REQUIRED TO
25 FILE IT ON THE 31ST. YOU CAN FILE IT ON THE 28TH

1 BEFORE YOU LEAVE.

2 ARE YOU SAYING YOU CAN'T GET THAT DONE?

3 MR. EISENBERG: I PROBABLY CAN, BUT I JUST
4 WOULD PREFER HAVE --

5 THE COURT: OKAY. I'M USUALLY VERY
6 ACCOMMODATING ON THESE MATTERS, BUT I DON'T REALLY
7 UNDERSTAND THAT ONE.

8 HOW LONG WILL YOU BE GONE?

9 MR. EISENBERG: ONE WEEK.

10 THE COURT: OKAY. CHANGING THE FOLLOWING
11 DATES:

12 LAST DATE TO FILE MOTIONS, AUGUST 14,
13 2017.

14 LAST DATE TO HEAR THEM, NOVEMBER 6, 2017.
15 EXPECTED RULINGS BY DECEMBER 4, 2017.

16 LAST DATE TO FILE DIRECT TESTIMONY,
17 DECEMBER 11, 2017.

18 LAST DATE TO FILE OBJECTIONS, DECEMBER
19 15, 2017.

20 EXPECTED RULINGS BY DECEMBER 19, 2017.

21 JOINT REPORT WITH RESPECT TO ANY OPEN
22 ISSUES TO BE FILED BY JANUARY 2, 2018. AND THERE MAY
23 BE NONE.

24 AND FINAL PRETRIAL CONFERENCE, JANUARY 8,
25 2018 AT 3:00 O'CLOCK.

1 TRIAL DATE, AS STATED EARLIER, FEBRUARY
2 6, 2018.

3 NOW, WITH RESPECT TO -- ARE THERE ANY --
4 OTHER THAN -- ARE THERE ANY OTHER ISSUES ON SCHEDULING
5 OR OTHER MATTERS?

6 MR. EISENBERG: YES. THE BOTTOM PART OF THE
7 CHART HERE THAT HAS LIKE DISPOSITIVE MOTIONS, SUMMARY
8 JUDGMENT, ARE THOSE --

9 THE COURT: IT'S MERGED INTO THE DATES THAT I
10 GAVE ALREADY.

11 MR. EISENBERG: OKAY. SO WHAT WOULD BE ON THE
12 TOP OF PAGE 15 OF THE CHART, LIKE ANTICIPATED RULING ON
13 ALL MOTIONS, WOULD INCLUDE DISPOSITIVE MOTIONS?

14 THE COURT: CORRECT.

15 MR. EISENBERG: THANK YOU FOR CLARIFYING THAT
16 POINT FOR ME.

17 I WAS WONDERING IF THE COURT IS GOING TO
18 ENTERTAIN ORAL ARGUMENT ON THE EQUAL PROTECTION CLAUSE
19 CLAIM?

20 THE COURT: I CAN -- I'LL CONSIDER THAT.

21 JUST A MINUTE.

22 MR. BRADY, WHAT DOES THE EQUAL PROTECTION
23 CLAUSE CLAIM DO THAT ISN'T DONE BY THE SECOND AMENDMENT
24 CLAIM?

25 MR. BRADY: SURE, YOUR HONOR.

1 I THINK THE KRAMER CASE THAT THE
2 PLAINTIFF CITED IN THEIR OPPOSITION BRIEF IS VERY
3 INSTRUCTIVE. IT'S, ESSENTIALLY, ON ALL FOUR POINTS IF
4 IT WASN'T A FIRST AMENDMENT ISSUE VERSUS SECOND
5 AMENDMENT; BUT THAT'S SORT OF IRRELEVANT.

6 EVEN -- THE ARGUMENT IS, EVEN IF THE
7 GOVERNMENT DID NOT HAVE TO ALLOW CARRY OUTSIDE THE
8 HOME, WHETHER IT BE CONCEALED OR OPEN, IN ANY FORM, BY
9 ALLOWING SOME TO EXERCISE THAT RIGHT OUTSIDE THE HOME,
10 IT IS AN INFRINGEMENT ON THE EQUAL PROTECTION CLAIM.

11 THIS IS NOT THE SAME EXACT CLAIM AS THE
12 SECOND AMENDMENT. IN OTHER WORDS, IF THE SECOND
13 AMENDMENT ALLOWED THE GOVERNMENT TO BAR CARRY, OKAY,
14 THAT'S FINE. BUT ONCE THE GOVERNMENT ALLOWS CARRY,
15 THEN EQUAL PROTECTION ISSUES ARE TRIGGERED.

16 AND IF YOU LOOK AT THE KRAMER CASE, IT'S,
17 ESSENTIALLY, THE FIRST AMENDMENT DOES NOT COMPEL A
18 LOCAL SCHOOL BOARD TO ALLOW THE VOTE ON SCHOOL BOARD
19 OFFICIALS. BUT ONCE THE SCHOOL BOARD DOES HOLD
20 ELECTIONS, THEN FIRST AMENDMENT PROTECTIONS ATTACH.
21 AND I THINK THAT THAT'S IDENTICAL TO THIS SITUATION.
22 THERE'S NO RIGHT TO CARRY OUTSIDE THE HOME, ACCORDING
23 TO THE GOVERNMENT. THERE'S NO RIGHT TO BEAR ARMS
24 OUTSIDE THE HOME. BUT THEY'RE ALLOWING SOME PEOPLE TO
25 DO IT IN THE FORM OF CONCEALED WEAPON PERMITS AND IN

1 THE FORM OF OPEN CARRY PERMITS.

2 AND WHETHER THERE'S A PROTECTION OR NOT
3 TO -- FOR CONCEALED CARRY, I DON'T THINK IT'S -- ONE
4 CAN SAY THAT THOSE PEOPLE ARE NOT BEARING ARMS IN --

5 THE COURT: I UNDERSTAND.

6 MR. EISENBERG?

7 MR. EISENBERG: IF THERE IS NO SECOND
8 AMENDMENT RIGHT TO CARRY A FIREARM IN PUBLIC, THEN
9 THERE'S NO FUNDAMENTAL RIGHT AT ISSUE FOR EQUAL
10 PROTECTION ANALYSIS.

11 THE PLAINTIFFS HAVE NOT IDENTIFIED A
12 SUSPECT CLASS OF PERSONS THAT IS BEING TREATED
13 DIFFERENTLY THAN ANYONE ELSE. SO, THEREFORE, THE
14 EXTENT THAT -- TO THE EXTENT THAT THERE COULD BE AN
15 EQUAL PROTECTION CLAIM, IT WOULD HAVE TO BE RESOLVED ON
16 A RATIONAL BASIS REVIEW NECESSARILY. AND THAT COULD BE
17 RESOLVED VERY QUICKLY, BUT IT'S ALSO SUBSUMED WITHIN
18 THE SECOND AMENDMENT CLAIM.

19 WE HAVE CITED MANY OTHER CASES THAT SAY,
20 IF THEY'RE GOING TO BE GETTING A SECOND AMENDMENT
21 ANALYSIS, THAT'S THE WAY YOU LOOK AT THE CONSTITUTIONAL
22 QUESTION. YOU CHOOSE A LEVEL OF SCRUTINY, IF THERE IS
23 AN INFRINGEMENT OF THE RIGHT OR THE RIGHT IS
24 IMPLICATED. SO THE EQUAL PROTECTION CLAUSE CLAIM IS
25 ENTIRELY REDUNDANT.

1 THE COURT: I'LL REFLECT ON THIS ISSUE.

2 BUT YOU DO CONCEDE THAT CITIZENS WHO LIVE
3 IN COUNTIES THAT ARE LESS THAN 200,000 IN POPULATION
4 HAVE THE ABILITY TO APPLY TO THE SHERIFF IN THOSE
5 COUNTIES FOR AN OPEN CARRY PERMIT; CORRECT?

6 MR. EISENBERG: CERTAINLY, WE CONCEDE THAT.

7 THE COURT: AND THAT'S DIFFERENT THAN CITIZENS
8 WHO LIVE IN COUNTIES -- LARGER COUNTIES, THEY CANNOT
9 APPLY FOR ONE?

10 MR. EISENBERG: CORRECT, YOUR HONOR.

11 THE COURT: BUT YOU'RE -- SO YOU'RE NOT -- SO
12 THERE COULD BE A BASIS FOR SAYING THERE'S DIFFERENT
13 CATEGORIES.

14 BUT YOUR POSITION IS, THAT THE LEGAL
15 ANALYSIS AS TO WHETHER THOSE CATEGORIES COULD SUPPORT A
16 HYPOTHETICAL EQUAL PROTECTION CLAIM IS THE SAME
17 ANALYSIS THAT APPLIES UNDER THE SECOND AMENDMENT?

18 MR. EISENBERG: IT IS. AND IT'S ON THE
19 AUTHORITY OF MULTIPLE CASES THAT WE CITE, SOME OF WHICH
20 ARE FIRST AMENDMENT CASES.

21 BUT IF THE CASES ALLOW -- IF THAT CLAIM
22 IS ALLOWED TO PROCEED, AS I THINK YOU MIGHT BE
23 INDICATING, THEN IT WOULD NECESSARILY BE A RATIONAL
24 BASIS REVIEW SITUATION.

25 THE COURT: IS THERE SOMETHING NEW, MR. BRADY?

1 MR. BRADY: IF I MAY, YOUR HONOR?

2 TO BE CLEAR, THIS IS NOT A SUSPECT CLASS
3 ANALYSIS UNDER THE EQUAL PROTECTION CLAUSE. THAT IS A
4 SEPARATE CLAIM THAT YOU ARE TREATING A CLASS
5 DIFFERENTLY ON THE BASIS OF THE ABILITY TO EXERCISE A
6 RIGHT. AND SO THAT IS -- AND THIS IS NOT REDUNDANT.
7 THE CASE THEY'RE TALKING ABOUT IS TEIXEIRA. THEY
8 WHOLLY IGNORE OUR KRAMER ANALYSIS, BOTH DEFENDANTS.
9 THE TEIXEIRA CASE SPECIFICALLY SAID, QUOTE, "THIS IS
10 NOT A SITUATION WHERE ONE GROUP IS BEING DENIED A RIGHT
11 WHILE ANOTHER IS NOT." THAT WAS IN THAT CASE BECAUSE
12 THEY WERE NOT -- NOBODY WAS ALLOWED TO EXERCISE THE
13 RIGHT IN THE TEIXEIRA CASE.

14 HERE, PEOPLE ARE BEING ALLOWED TO CARRY
15 OUTSIDE THE HOME. PLAINTIFFS ARE NOT. AND THAT
16 TRIGGERS AN EQUAL PROTECTION ANALYSIS.

17 THE COURT: OKAY. I UNDERSTAND.

18 I'LL ISSUE A WRITTEN RULING WITH RESPECT
19 TO THAT, AS WELL AS ON THE ISSUE OF WHETHER THE SHERIFF
20 CAN BE A PARTY IN THIS ACTION.

21 IF THE SHERIFF -- IF I ADHERE TO MY
22 TENTATIVE VIEWS THAT THE SHERIFF IS NOT A PARTY AT THIS
23 TIME AGAINST WHOM RELIEF CAN BE OBTAINED, THE DISMISSAL
24 WOULD BE WITHOUT PREJUDICE TO A LATER MOTION TO AMEND
25 ADD THE SHERIFF BASED ON AN ARGUMENT AS TO WHY THE

1 RELIEF BEING SOUGHT IN LIGHT OF DISCOVERY OR OTHER
2 DEVELOPMENTS IN THE CASE AGAINST THE SHERIFF IS
3 AVAILABLE.

4 OKAY. YOU HAVE PROPOSED MEETING WITH A
5 MAGISTRATE JUDGE TO TRY TO RESOLVE THIS MATTER; IS THAT
6 RIGHT?

7 MR. EISENBERG: YOUR HONOR, WE ACTUALLY
8 BELIEVE THAT THIS CASE CANNOT BE RESOLVED BY A
9 SETTLEMENT CONFERENCE. THE STATE CANNOT COMPROMISE ON
10 THE MEANING OF THE LAW. SO IT WOULD EITHER BE ONE SIDE
11 COMPLETELY CAPITULATING OR NO SETTLEMENT.

12 MR. BRADY: I AGREE WITH THAT, YOUR HONOR.
13 THIS IS A LEGAL QUESTION DESIGNED TO BE ANSWERED BY --

14 THE COURT: AT THIS TIME, I'M NOT GOING TO
15 DIRECT THAT YOU HAVE A SETTLEMENT CONFERENCE BECAUSE I
16 DON'T -- IT'S NOT A FORMALITY.

17 IF EITHER SIDE LATER BELIEVES THAT SOME
18 INFORMAL RESOLUTION MAY BE POSSIBLE, THEN DISCUSS IT.
19 AND IF YOU WISH TO MEET WITH A MAGISTRATE JUDGE TO
20 DISCUSS THAT OR HAVE A SETTLEMENT CONFERENCE, LET MY
21 CLERK KNOW SO WE CAN ARRANGE THAT.

22 THANK YOU. THANK YOU FOR YOUR HELP
23 TODAY.

24 MR. BRADY: THANK YOU, YOUR HONOR.

25 MS. CHOI: THANK YOU.

1 MR. EISENBERG: THANK YOU, YOUR HONOR.

2 THE COURT: ANYTHING ELSE WE NEED TO ADDRESS?

3 MS. CHOI: NO, YOUR HONOR.

4 THE COURT: ALL RIGHT. THANK YOU.

5 (END OF PROCEEDINGS)

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CERTIFICATE OF OFFICIAL REPORTER

I, ALEXANDER T. JOKO, FEDERAL OFFICIAL COURT REPORTER, IN AND FOR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION 753, TITLE 28, UNITED STATES CODE, THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER, AND THAT THE TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

DATE: AUGUST 1, 2018

/S/ ALEXANDER T. JOKO

ALEXANDER T. JOKO, CSR NO. 12272
FEDERAL OFFICIAL COURT REPORTER

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"MAY 11:9	2017 26:11	6TH 2:29	ADOPT 28:12
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26:24	250,000 10:2	ACCEPTING 5:6	ALLOWING 31:9,
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26:10		ACTUALLY 3:24,	9:15, 13:8,
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26:4, 26:5	< 4 >	ADD 26:1, 34:25	15:16, 15:24,
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