

10-56971

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

EDWARD PERUTA, *et al.*,
Plaintiffs-Appellants,

v.

COUNTY OF SAN DIEGO, *et al.*,
Defendants-Appellees.

**On Appeal from the United States District Court
For the Central District of California
Case No. CV-09-02371-IEG**

**BRIEF OF *AMICI CURIAE* INTERNATIONAL LAW ENFORCEMENT
EDUCATORS AND TRAINERS ASSOCIATION,
LAW ENFORCEMENT LEGAL DEFENSE FUND, LAW ENFORCEMENT
ACTION NETWORK, AND LAW ENFORCEMENT ALLIANCE OF
AMERICA IN SUPPORT OF APPELLANTS**

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CORPORATE DISCLOSURE STATEMENT

International Law Enforcement Educators and Trainers Association is a corporation which has no parent corporation. It issues no stock, and therefore no publicly held company owns 10% or more of its stock.

Law Enforcement Legal Defense Fund is a nonprofit organization which has no parent corporation. It issues no stock, and therefore no publicly held company owns 10% or more of its stock.

Law Enforcement Action Network is a nonprofit organization which has no parent corporation. It issues no stock, and therefore no publicly held company owns 10% or more of its stock.

Law Enforcement Alliance of America is a nonprofit organization which has no parent corporation. It issues no stock, and therefore no publicly held company owns 10% or more of its stock.

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INTEREST OF AMICI CURIAE

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*, and by Justices Alito and Stevens in *McDonald v. Chicago*.

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. LEAN seeks to provide insight to the Court about the negative ground level impact the challenged provisions will have on police officers, citizens, and public 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. Many of LEAA’s members reside and/or work in California. 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 other California cases, and on the prevailing side in two United States Supreme Court cases.

STATEMENT PURSUANT TO RULE 29(c)

No 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 preparing or submitting this brief. All parties have consented to the filing of this brief.

SUMMARY OF ARGUMENT

This brief provides empirical evidence about licensed carry. Most of the evidence comes from law enforcement and other official government records.

Today, most states have years of experience with licensed carry; so there is abundant information about the behavior of persons with carry permits. State law enforcement records show the persons who are issued carry permits—after proper and fair investigation by law enforcement—are far more law-abiding than the general population. (Part III.B.)

Perhaps as a result, a 2013 poll of over 15,000 law enforcement officers found strong support for licensed carry. (Part II.A.) In the past, when some states were enacting licensed carry, some law enforcement leaders expressed serious worries; based on subsequent experience, these leaders have honestly said that licensed carry is not a problem. (Part I.B.).

We know that licensed carry has repeatedly stopped attempted mass murders.

(Part II.C).

After two decades of social science studies, there is still disagreement about whether licensed carry leads to statistically significant reductions in violent crime. The largest number of studies say “yes,” but many others find no statistically significant effects; this latter group includes two meta-studies by National Research Council and by the Centers for Disease Control. One professor continues to insist that licensed carry is harmful. (Part III.C.).

What is clear from the social science: using a firearm to resist a violent attack reduces victim injury. A large fraction of defensive gun uses take place outside the home. Most defensive gun uses do not require the defender to fire a shot; drawing or displaying the gun convinces the criminal to desist. Researchers argue about the frequency of defensive gun use, with the lowest estimates being about a hundred thousand annually in the United States. The best designed, most sophisticated studies put the number in the range of one to two million. (Part II.B.).

Licensed carry is the well-established norm in the states of the Ninth Circuit, and nationally. (Part I.A.). Opponents of the right to bear arms sometimes offer doomsday predictions, or assert that citizens who have been granted carry permits are a menace to society. These claims are supported neither by law enforcement data nor by experience. (Parts I.A., III.A.).

ARGUMENT

I. THE EXPERIENCE OF 42 STATES SHOWS THAT FAIRLY ADMINISTERED, LICENSED CONCEALED CARRY DOES NOT INCREASE CRIME OR PUBLIC DANGER.

A. Fairly-administered licensed carry is the norm in this Circuit and nationally.

In Appellees' Brief before the panel, San Diego paints a grim picture if licensed citizens are allowed to carry firearms concealed:

Concealed handguns are the priority of law enforcement everywhere because of the use of the concealed handgun in vast numbers of criminal offenses. (Zimring Declaration, ER Vol. III, Tab 30.) 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.

Appellees' Brief 25-26. This is highly unrealistic, from the standpoint of law enforcement; it fails to distinguish between criminals (who do not obtain concealed carry licenses) and law-abiding citizens who have gone through a fingerprint-based background check, formally applied for a license from law enforcement authorities, passed 16-24 hours of safety training, and met other objective criteria that show they are very unlikely to misuse a firearm.

Forty-two states already have essentially the same kind of handgun carry

authorization system that Appellants correctly argue the Second Amendment requires, or do not require a license to carry. Every state in the Ninth Circuit, except Hawaii and some counties in California, has a fairly administered carry licensing statute based on objective criteria. The states with objective and fair licensing systems are called “shall issue” states. Two Ninth Circuit states (Alaska and Arizona), as well as Vermont and Wyoming, do not require a license to carry either openly or concealed.¹

Thus, throughout most of the country, it is entirely normal for law-abiding adults to be carrying handguns for lawful protection. Licensed carry is not an untested novelty. Since Texas passed its “shall issue” statute in 1995, over half the U.S. population has lived in states where non-discriminatory licensed carry has been the law.

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

“Shall issue” licensing systems have spread rapidly throughout the states over

¹ The Hawaii amicus brief predicts that “the entire Ninth Circuit will become a de facto shall-issue region leading to a massive, and dangerous, proliferation of guns on the streets of America. At minimum, that would turn millions of ordinary daily conflicts in the public arena into potentially life-ending tragedies. Only this Court, by overturning the panel decision below, can prevent that.” Hawaii Amicus Br. at 22. Dkt. No. 230. This prediction of calamity ignores the fact that most of the Ninth Circuit is already legally or de facto “shall issue,” without the dire effects Hawaii prophesies.

the past three decades—paralleling the national trend towards more scrupulous compliance with the Second Amendment. In many states, when the legislature was considering carry license reform to make the system fair, objective, and non-arbitrary, opponents made hysterical predictions similar to the claims raised by Appellants and their amici 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.”² Based on experience, some of the worriers have forthrightly admitted that they were wrong.³ 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

² 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>.

³ Skoch, *supra* note 2.

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.”⁴

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.”⁵ The 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.⁶

Michigan adopted a “shall issue” law in 2001. In 2004, the *Daily Oakland*

⁴ 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>.

⁵ Clayton E. Cramer & David B. Kopel, “*Shall Issue*”: *The New Wave of Concealed Handgun Permit Laws*, 62 TENN. L. REV. 679, 693 (1995).

⁶ *Id.* at 692-03.

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.”⁷

Significantly, no “shall issue” state has reverted to arbitrary licensing or a de facto ban on licensed carry such as San Diego’s. Neither have those 42 states experienced a “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,” as San Diego predicts. Appellees’ Br. 26. It would be unusual indeed if a policy that has worked so well for every adopting state would cause a problem in California.

⁷ Jose Juarez, *Our Quiet Rise In Handguns*, DAILY OAKLAND PR. (June 27, 2004), <http://www.theoaklandpress.com/articles/2004/06/27/localnews/20040627-archive12.txt?viewmode=fullstory>.

II. CITIZENS WHO ARE LAWFULLY LICENSED TO CARRY ASSIST LAW ENFORCEMENT, HELP PROTECT THEMSELVES AND OTHERS, AND REDUCE CRIME.

A. The largest survey of law enforcement professionals shows wide and strong support for licensed carry.

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.⁸ 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: 91.3% of the respondents selected “Yes, without question and

⁸ PoliceOne, *Gun Policy & Law Enforcement Survey* (2013) (reported at http://ddq74coujki1i.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/>.

without further restrictions,” and only 8.6% believed that concealed carry should be restricted to law enforcement officers, were neutral, or were unsure. This widespread law enforcement support for properly licensed, law-abiding citizens is based, no doubt, on the experience most of them have in the 42 states that have fair, objective licensing standards.

In the same survey, the respondents were 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) were only 9.6% of respondents. *Id.*

B. Studies of defensive gun use show that it promotes crime victim safety.

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 13 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).⁹

⁹ 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

Philip Cook of Duke and Jens Ludwig of Georgetown were skeptical of Kleck's results, and so they conducted their own survey for the Police Foundation. That survey produced an estimate of 1.46 million DGUs.¹⁰ 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 somewhere 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).

This Court need not resolve the particulars of the debate among social scientists. All social science research shows that defensive gun use is frequent in

methodologically. I do not like their conclusions that having a gun can be useful, but I cannot 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).

¹⁰ PHILIP COOK & JENS LUDWIG, *GUNS IN AMERICA: RESULTS OF A COMPREHENSIVE NATIONAL SURVEY OF FIREARMS OWNERSHIP AND USE* (1996).

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 defender's home (yard, carport, street adjacent to the home, etc.) GARY KLECK, *TARGETING GUNS* 192 (1997). Thus, a fair, licensed concealed carry system will facilitate individual protection and crime reduction in the places where a large fraction of DGUs occur. Research by several investigators also reveals that citizens who use a gun to oppose an attack are less likely to be killed or injured.¹¹

¹¹ Professors Gary Kleck and Jongyeon Tark examined data from the National Crime Victimization Survey, an annual study by the Census Bureau and the Department of Justice that asks individuals if they were crime victims in the last year and, if so, collects information about the circumstances. Of persons who used guns defensively, the Kleck and Tark study found only 2 percent were injured after they used guns. Gary Kleck & Jongyeon Tark, *Resisting Crime: The Effects of Victim Action on the Outcomes of Crimes*, 42 *CRIMINOLOGY* 861, 903 (2005). These findings were consistent with previous studies of defensive gun use, which found such use does not increase the victim's risk of harm. Lawrence Southwick, *Self-Defense with Guns: The Consequences*, 28 *J. CRIM. JUST.* 351, 362, 367 (2000) (National Crime Victimization Survey robbery data; if 10 percent more victims had guns, serious victim injury would fall 3-5 percent); Gary Kleck & Miriam DeLone, *Victim Resistance and Offender Weapon Effects in Robbery*, 9 *J. QUANTITATIVE CRIMINOL.* 55, 73-77 (1993) (study of all NCVS robbery data from 1979-85; the most effective form of resistance, both for thwarting the crime, and for reducing the chance of victim injury, is resistance with a gun).

Professor Clayton Cramer's 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.¹² Of course since most defensive gun uses do not result in a shot being fired, many will never be reported in the newspapers.

C. Licensed carry has prevented massacres.

It is nature of the news business that atrocious gun crimes are major national stories, whereas defensive gun uses which thwart would-be mass killers are often not reported beyond the state where they occurred. For example, on December 10, 2007, a deranged young man entered the lobby of New Life Church in Colorado Springs, Colorado, carrying two handguns, a rifle, and more than a thousand rounds of ammunition. He had murdered four people in the previous twelve hours—two of them in the church parking lot immediately before. The killer had carefully waited until a patrol car in front of the church had departed. Jeanne Assam, a member of the church who was serving as a volunteer security guard that day, drew and fired, preventing what might otherwise have been the largest mass shooting in U.S.

¹² 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>.

history.¹³ Colorado had become a “shall issue” state in 2003.

Illinois began issuing carry permits under a “shall issue” system in early 2014; the legislature had reformed the law in 2013, as a result of decisions by the Seventh Circuit and the Illinois Supreme Court. *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012); *People v. Aguilar*, 2 N.E.3d 321 (Ill. 2013). On April 17, 2015, a man “opened fire on a crowd of people in Logan Square,” Chicago. An Uber driver with a carry permit fired six shots, and stopped the attacker.¹⁴

Pennsylvania has been a “shall issue” state since 1989. On March 22, 2015, a man began shooting inside the Falah Barbershop in West Philadelphia. Another man, with a carry license, shot him. Philadelphia Police Captain Frank Llewellyn said, “He responded and I guess he saved a lot of people in there.”¹⁵

¹³ Thomas Hendrick, *Security Guard: “God Guided Me and Protected Me,”* KMGH-TV Denver (Dec. 10, 2007).

<http://www.thedenverChannel.com/news/14817480/detail.html>; Judy Keen & Andrea Stone, *This Month’s Mass Killings a Reminder of Vulnerability*, USA TODAY, Dec. 21, 2007; JEANNE ASSAM, *GOD, THE GUNMAN & ME* (2010). New Life Church is a megachurch; there were thousands of worshippers present in the sanctuary when the killer entered.

¹⁴ Geoff Ziezulewicz, *Uber driver, licensed to carry gun, shoots gunman in Logan Square*, CHI. TRIB., Apr. 20, 2015,

<http://www.chicagotribune.com/news/local/breaking/ct-uber-driver-shoots-gunman-met-0420-20150419-story.html>.

¹⁵ *Gunman Shot Dead Inside West Philadelphia Barbershop*, CBSPHILLY.COM, Mar. 22, 2015, <http://philadelphia.cbslocal.com/2015/03/22/man-shot-dead-inside-west-philadelphia-barbershop/>.

On July 24, 2014, a man with a long record of violent crime, illegal gun possession, and mental illness entered a psychiatric crisis center adjoining Mercy Fitzgerald Hospital, near Philadelphia. He shot a nurse, and then opened fire against his doctor. The doctor returned fire, and stopped the killer, who had 39 unfired rounds of ammunition left. “Without a doubt, I believe the doctor saved lives,” said Police Chief Donald Molineux. “Without that firearm, this guy could have went out in the hallway and just walked down the offices until he ran out of ammunition.”¹⁶ There are many more stories such as this.¹⁷

Again, the PoliceOne survey of more than 15,000 law enforcement professionals across the country is instructive. The respondents were asked: “What

¹⁶ *Armed Doctor Saved Lives in Hospital Shooting Near Philadelphia, Police Chief Says*, ASSOCIATED PRESS, July 25, 2014, <http://www.people.com/article/armed-doctor-gun-philadelphia-hospital-shooting>; *More might have died if doctor had not shot gunman*, PHIL. INQUIRER, July 27, 2015, http://www.philly.com/philly/news/20140726_Hospital_shooter_had_history_of_mental_illness_arrests_records_show.html (“‘If Dr. Silverman did not have the firearm and did not utilize the firearm, he'd be dead today,’ [District Attorney] Whelan said. ‘And other people would be dead.’”).

¹⁷ *See, e.g.*, David Kopel, *Arming the right people can save lives*, L.A. TIMES, Jan. 15, 2013, <http://articles.latimes.com/2013/jan/15/opinion/la-oe-kopel-guns-resistance-nra-20130115> (“Pearl High School in Mississippi; Sullivan Central High School in Tennessee; Appalachian School of Law in Virginia; a middle school dance in Edinboro, Pa.; Players Bar and Grill in Nevada; a Shoney's restaurant in Alabama; Trolley Square Mall in Salt Lake City; New Life Church in Colorado; Clackamas Mall in Oregon (three days before Sandy Hook); Mayan Palace Theater in San Antonio (three days after Sandy Hook).”) (parentheticals in original).

would help most in preventing large scale shootings in public?”, and were given a choice of eight alternatives, including such things as better background checks, tighter gun laws, and “other.” Among these eight alternatives, by far the highest percentage (28.8%) chose “More permissive concealed carry policies for civilians.” PoliceOne Survey, Question 21.

III. INDIVIDUALS LICENSED TO CARRY CONCEALED FIREARMS ARE EXTRAORDINARILY LAW-ABIDING.

A. Assertions that licensed carriers frequently murder are based on false data.

The Brady Center to Prevent Gun Violence and the Violence Policy Center paint individuals who are legally licensed to carry concealed firearms as killers.

The Brady Center claims in its amicus brief:

Another study has shown that in the last four years, concealed handgun permit holders have shot and killed at least eleven law enforcement officers and 359 private citizens. *See* Violence Policy Center, *Concealed Carry Killers* (2011), <http://vpc.org/ccwkillers.htm> (last visited Aug. 11, 2011). States have a stronger need to protect their citizens from individuals carrying guns in public than they do from individuals carrying guns in their homes.

Brady Br. at 21. Dkt. No 48.

As of May 12, 2012, the organization claimed that since 2007 374 persons

had been “killed by concealed carry killers.”¹⁸ The assertion borders on the fraudulent. A detailed analysis of the VPC claims is presented in Professor Clayton Cramer’s paper *Violence Policy Center’s Concealed Carry Killers: Less than it Appears*, available at <http://ssrn.com/abstract=2095754>. Professor Cramer’s careful examination reveals many problems with VPC’s “data”:

1. At least 120 of these deaths were derived from state reports that aggregate and anonymize data, making it impossible to verify their accuracy or determine if they include incidents listed elsewhere in the VPC report. *Id.* at 37. In some cases, the data are clearly wrong, listing a purported homicide of a police officer by a licensee in Michigan in a period when *every* homicide of a police officer was by convicted felons (who are ineligible for carry licenses). *Id.* at 14-15.

2. A total of 132 of these deaths were either suicides from these aggregate reports, or are known to be individual suicides, where the licensee killed himself without any criminal attack on others. *Id.* at 18. Carry laws have no effect on whether a gun owner chooses to commit suicide.

3. At least eight of these incidents (25 deaths) were clearly *not* licensees. *Id.* at 7, 37. In several of these cases, VPC admits that these persons were not

¹⁸ See Violence Policy Center, *Concealed Carry Killers*, <http://concealedcarrykillers.org/> The numbers vary over time, because this is a website, not a publication.

licensees.

4. At least 25 incidents involved persons whose concealed handgun license could not be verified. *Id.* at 37.

5. A few cases involve persons whom the VPC lists as licensees because they appear to have had state permits to *purchase* a handgun—*not* a license to carry concealed. *See, e.g., id.* at 4.

6. VPC included at least eight incidents (eight deaths), where the criminal justice system found the licensee was in the right. *Id.* at 12.

7. VPC included 21 incidents (23 deaths) where the charges appear still to be pending. In some cases, these cases were more than four years old, and there is good reason to suspect that charges were quietly dropped, which explains the lack of news coverage. *Id.* at 12, 37-38.

8. VPC includes at least one self-defense case, involving a licensee named Cleveland Anthony, whom it appears was not even *charged* with a crime. *Id.* at 12.

9. VPC includes 10 incidents (19 deaths) which occurred in “may-issue” states. Many of these involved gunfire by retired police officers, who by federal statute have a right to carry in all 50 states. 18 U.S.C. § 926B. *Id.* at 17, 37. Others involved persons who were licensed in their home states, but who were unlawfully

carrying in another state that did not recognize their licenses. *Id.* at 17.

10. VPC includes a total of 38 incidents (72 deaths) which took place in the home or business of a licensee. *Id.* at 19, 37. Generally, states do not require a concealed carry license in one's own home or business. These cases are irrelevant to "shall issue" laws.

11. VPC includes 10 incidents (15 deaths) where a licensee was already breaking the law by carrying a gun. *Id.* at 21, 37. Usually these involve carrying a gun while intoxicated, but others are clearly premeditated crimes where any concealed carry law is irrelevant. Someone who plans out a murder will not be discouraged by failure to get a concealed carry license.

12. VPC includes 36 incidents (96 deaths) where the killer engaged in a carefully planned premeditated crime. *Id.* at 22, 37. These are sometimes mass murders, but sometimes they are individual acts of revenge, or domestic homicides. "Shall issue," "may-issue," "no-issue": none of these matter when the plan is murder.

13. VPC includes eight accidental deaths which took place in a licensee's home. *Id.* at 26, 37. Because a concealed carry license is not required in order to have a loaded firearm in one's home, these accidental deaths have no connection to laws about public carry.

14. VPC includes two incidents (two deaths) where the licensee did not even use a gun to commit a crime. *Id.* at 37.

15. VPC includes 8 incidents (26 deaths) where either the only weapon, or the primary weapon used, was a long gun. *Id.* at 37. A concealed handgun carry license is again irrelevant.

After excluding incidents where the data was wrong or a concealed carry license is irrelevant, Professor Cramer found only a total of 79 incidents, resulting in 92 deaths. *Id.* at 38.

In short, the VPC's "data" are false, compiled by labeling as "concealed carry killers" persons who engaged in lawful self-defense, people who committed suicide at home, people who did not have carry permits, and many other situations in which a carry permit was entirely irrelevant as a matter of law and of common sense.

B. Law enforcement data show that licensees are highly law-abiding.

While the 92 deaths are sobering, compared to the number of licensees in the U.S. this is a tiny number. According to the Government Accountability Office, there were more than 8 million active concealed carry permits as of December 31, 2011, in the 45 states that provided data.¹⁹ The 92 deaths would constitute 0.23

¹⁹ Government Accountability Office, *States' Laws and Requirements for Concealed Carry Permits Vary across the Nation*, GAO-12-717 (July 17, 2012),

murders per 100,000 concealed weapon licensees annually. That is one homicide for every 400,000 concealed carry licensees. The rate is less than 1/22 of the annual murder rate by the general U.S. population; that rate is 5.2 per 100,000 people.²⁰ Licensees are far more law-abiding than the public as a whole.²¹

In several states which issue carry licenses in an objective manner, 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, in Colorado in the five-year period 2009-13, there were 154,434 concealed handgun carry permits issued. During this same period, 1,390

<http://www.gao.gov/products/GAO-12-717>. A 2014 study found there were more than 11 million concealed firearm carry licensees. *Concealed Carry Permit Holders Across the United States*, Crime Prevention Research Center (July 9, 2014), <http://crimepreventionresearchcenter.org/wp-content/uploads/2014/07/Concealed-Carry-Permit-Holders-Across-the-United-States.pdf>.

²⁰ FBI, CRIME IN THE UNITED STATES 2011, Table 1, <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/table-1> (average of 2007-2011).

²¹ Persons with concealed handgun licenses are also more law-abiding regarding crimes other than homicide. As demonstrated by extensive data from 2004-2013, “for crimes that often or always involve guns—such as aggravated assault with a deadly weapon, or deadly conduct involving discharge of a firearm—the crime rate for CHL holders is dramatically smaller than for the general population.” Amicus Br. of Governors of Texas *et al.* at 10-12. Dkt. No. 246.

permits were revoked. 931 of these permits were revoked following an arrest.²² Contrast this with the arrests of over 200,000 Colorado adults in 2013 alone.²³ 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.²⁴

Michigan: 161 charges of misdemeanors involving 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.

²² Annual data are available on the website of County Sheriffs of Colorado, at http://csoc.org/ccw_application.asp.

²³ FBI, CRIME IN THE UNITED STATES 2013, table 69, http://www.fbi.gov/about-us/cjis/ucr/crimein-the-u.s/2013/crime-in-the-u.s.-2013/tables/table-69/table_69_arrest_by_state_2013.xls.

²⁴ 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).

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.

There have been many social science studies of licensed carry. The largest number have found statistically significant reductions in some types of violent crime. But a substantial number found no statistically significant effects. The outlier is Professor John Donahue, cited by Appellees' *amici*, who claims to have found a statistically significant increase in crime. *See* Carlisle E. Moody & Thomas B. Marvell, *The Debate on Shall-Issue Laws*, 5 *ECON J. WATCH* 269 (2008)²⁵ (review of all prior studies; the authors' original research found a statistically significant reduction in robbery only); NATIONAL RESEARCH COUNCIL, *FIREARMS AND VIOLENCE: A CRITICAL REVIEW* (2005) (taking into account all prior literature, no statistically significant effects); Task Force on Community Preventive Services, Centers for Disease Control, *First Reports Evaluating the Effectiveness of Strategies for Preventing Violence: Firearms Laws*, 52 *MORBIDITY AND MORTALITY WEEKLY REP.* 11 (Oct. 3, 2003) (no statistically discernable effects). *See also* Carlisle E. Moody, Thomas B. Marvell, Paul R. Zimmerman, & Fasil Alemante, *The Impact of Right-to-Carry Laws on Crime: An Exercise in*

²⁵ http://econjwatch.org/file_download/234/2008-09-moodymarvell-com.pdf.

Replication, 4 REV. OF ECON. & FINANCE 33 (2014) (replicating and checking Donohue’s 2011 study. “Once corrected for omitted variables, the most robust result” is that right to carry laws “significantly reduce murder... There is no robust, consistent evidence that RTC laws have any significant effect on other violent crimes, including assault.”).

Social scientists may never achieve unanimity. The law enforcement agency data from “shall issue” jurisdictions show that licensed citizens are highly law-abiding. Sometimes they saves lives—sometimes a lot of lives. In vindicating appellants’ constitutional rights, this Court need not fear the doomsday scenarios of appellees’ amici.

CONCLUSION

For the reasons stated above, the decision of the District Court should be reversed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with Rule 32(a)(7)(C) of the Federal Rules of Appellate Procedure. According to the word count feature of the word-processing system used to prepare the brief, it contains 5,678 words, exclusive of those matters that may be omitted under Rule 32(a)(7)(B)(iii).

I further certify that the foregoing brief complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6). It was prepared in a proportionately spaced typeface using 14-point Times New Roman font in Microsoft Word.

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Date: April 30, 2015

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2015, an electronic PDF of the foregoing Brief of *Amici Curiae* International Law Enforcement Educators and Trainers Association *et al.* in Support of Appellants was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

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