

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

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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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APPEARANCES OF COUNSEL:

FOR PLAINTIFFS: SEAN ANTHONY BRADY
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FOR DEFENDANTS: JONATHAN MICHAEL EISENBERG
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LANA LEE CHOI
LOS ANGELES OFFICE OF THE
COUNTY COUNSEL
500 WEST TEMPLE STREET
6TH FLOOR
LOS ANGELES, CA 90012

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

2 8:30 AM

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5

6 THE COURT: ITEM NO. 4, CV16-06164, MICHAEL
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 MC DONELL.

14 THE COURT: GOOD MORNING, MS. CHOI.

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

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 NINTH
24 CIRCUIT ADDRESSED AND DECIDED IN PERUTA, THEY'RE NOT
25 GOING TO BE RELITIGATED HERE. THERE'S NO BASIS TO DO

1 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 IS -- 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, THE COUNTY?

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

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
8 OPEN-CARRY AND A CONCEALED-CARRY CLAIM, AND THAT,
9 THUS --

10 THE COURT: IN THIS CASE?

11 MR. BRADY: YES.

12 THE COURT: NO.

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

15 MR. BRADY: CORRECT.

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

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

22 FACTUALLY, TO THE EXTENT THAT THERE IS A
23 CONCEALED-CARRY STATUTE IN PLACE, AS I SAID EARLIER,
24 THAT HAS BEEN UPHELD AS CONSTITUTIONAL, NOTWITHSTANDING
25 THE SECOND AMENDMENT CHALLENGE, THAT'S A FACT. BUT

1 THAT'S NOT A LEGAL ISSUE.

2 MR. BRADY: CORRECT.

3 AND I JUST WANT TO CLARIFY WHAT IS A
4 LEGAL ISSUE IS THAT, PLAINTIFFS ARE NOT SEEKING TO
5 RELITIGATE A CONCEALED-CARRY CHALLENGE FOR WHETHER IT
6 WAS ACCURATE OR NOT. PLAINTIFFS -- IN THE PERUTA
7 MATTER -- AND I CAN SPEAK TO THAT BECAUSE I WAS THEIR
8 COUNSEL. EVEN THOUGH THEY FRAMED -- WE FRAMED OUR
9 CLAIM IN PERUTA IN A WAY SEEKING TO CHALLENGE THE
10 ENTIRETY OF THE CALIFORNIA SCHEME AND SEEKING THE
11 REMEDY OF A CONCEALED-WEAPON PERMIT, THE FACT THAT THE
12 PLAINTIFFS IN PERUTA WERE ONLY SEEKING A
13 CONCEALED-WEAPON PERMIT, THE NINTH CIRCUIT EN BANC
14 PANEL CONSTRUED THAT AS SOLELY SEEKING -- MAKING
15 A CLAIM FOR A RIGHT TO CONCEAL-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,
20 CONCEALED-CARRY, ALL OF IT --

21 THE COURT: WHAT REMEDY -- IF YOU WERE
22 SUCCESSFUL ON THE MATTERS 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 -- AND 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 --

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
23 OPEN-CARRY, WHAT RELIEF COULD YOU OBTAIN FROM THE
24 SHERIFF IN 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. SO I UNDERSTAND YOUR HONOR'S --

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

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

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

18 THE COURT: BUT I DON'T UNDERSTAND YET WHAT
19 RELIEF YOU'RE GOING TO SEEK.

20 WHAT COURT ORDER WOULD YOU CONTEND WOULD
21 BE APPROPRIATE IN THIS ACTION AGAINST THE SHERIFF OF
22 LOS ANGELES?

23 MR. BRADY: THAT AS A STATE ACTOR -- BECAUSE
24 HE IS A STATE ACTOR IN THIS REGARD -- THAT THE STATE
25 DETERMINE -- PROVIDE AN OUTLET TO CARRY. JUST AS --

1 THE COURT: HOW DOES THE SHERIFF HAVE THE
2 AUTHORITY TO DETERMINE STATE POLICY?

3 MR. BRADY: THE SHERIFF HAS ALL THE AUTHORITY
4 UNDER STATE LAW AS HE HAS BEEN DELEGATED THAT
5 AUTHORITY IF --

6 THE COURT: BUT HE DOESN'T HAVE AUTHORITY TO
7 ISSUE AN OPEN-CARRY PERMIT AS A MATTER OF STATE LAW.

8 MR. BRADY: CORRECT.

9 BUT HERE'S WHERE I THINK THE DISCONNECT,
10 YOUR HONOR, IS, IF I MAY?

11 IF THE SHERIFF WERE TO ISSUE
12 CONCEALED-WEAPON PERMITS, EVEN THOUGH HE CANNOT BE
13 COMPELLED TO, IF HE WERE, I DON'T THINK THE PLAINTIFF
14 WOULD HAVE STANDING. I BELIEVE THAT THEIR SECOND
15 AMENDMENT RIGHT TO BEAR ARMS --

16 THE COURT: SPEAKING OF "STANDING," HAVE THE
17 INDIVIDUAL PLAINTIFFS APPLIED FOR AN OPEN-CARRY PERMIT?

18 MR. BRADY: NO, BECAUSE THEY CANNOT.

19 THE COURT: THEY CANNOT APPLY FOR ONE?

20 MR. BRADY: NO.

21 THERE IS NOT ONE AVAILABLE UNDER STATE
22 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 200,000 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 -- THEY FIT INTO SPECIFIC CERTAIN CATEGORIES BY
9 THE STATUTE; CORRECT?

10 MR. BRADY: NO, YOUR HONOR.

11 A NORMAL RESIDENT, A STANDARD NON-PEACE
12 OFFICER CAN OBTAIN, UNDER CALIFORNIA STATE LAW, AN
13 OPEN-CARRY PERMIT IF THEY RESIDE IN A COUNTY WHERE THE
14 POPULATION IS LESS THAN 200,000 PEOPLE. THAT'S WHERE
15 THE EQUAL PROTECTION CLAIM COMES IN IN THAT A PERSON
16 IN -- I DON'T HAVE 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: IF A PERSON SEEKS A -- IF A PERSON
25 BELIEVES HE OR SHE IS IN A CATEGORY THAT PERMITS AN

1 OPEN-CARRY IN A COUNTY OF MORE THAN 200,000, AND
2 BECAUSE HE OR SHE FITS -- MEETS THE STATUTORY
3 DEFINITION OR REQUIREMENTS, DOES HE OR SHE HAVE TO
4 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 -- A STATE
18 OPEN-CARRY PERMIT - I.E., ONE ISSUED TO A PERSON WHO
19 RESIDES IN A COUNTY OF MORE THAN 200,000, THAT REQUEST
20 FOR 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. A
2 PEACE OFFICER OR A SECURITY GUARD OR SOMETHING OF THAT
3 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
24 CONCEALED-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:

3 IF THE SHERIFF WERE TO ISSUE
4 CONCEALED-WEAPON PERMITS, AS HE'S ALLOWED TO DO, THEN
5 PLAINTIFFS WOULD BE MADE WHOLE, CORRECT. THEY WOULD --
6 IN OTHER WORDS, IF THEY HAD PERMITS, THEY WERE COMING
7 TO YOUR HONOR SAYING, "NO, WE WANT TO OPEN-CARRY," YOUR
8 HONOR WOULD, I BELIEVE, BE ABLE TO SAY, "NO, YOUR
9 SECOND AMENDMENT RIGHTS ARE INTACT. YOU HAVE A
10 CONCEALED-WEAPON PERMIT."

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

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

17 THE COURT: I DON'T UNDERSTAND THAT. I DON'T
18 THINK I AGREE WITH YOU. I DON'T UNDERSTAND WHAT
19 JUDGMENT COULD BE ENTERED IN THIS CASE REQUIRING THE
20 SHERIFF -- WHAT WOULD YOU BE REQUIRING THE SHERIFF TO
21 DO?

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

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

1 INDIVIDUALS.

2 THE COURT: THEY'VE BEEN DENIED?

3 MR. BRADY: YES.

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

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

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

23 SO THE PROBLEM NOW IS, DO WE GET BOXED IN
24 ON THE OTHER SIDE JUST GOING OPEN-CARRY? AND THEN COME
25 TO FIND OUT THAT YOU'RE NOT -- CAN'T -- YOU CAN'T SAY

1 STATE A CLAIM FOR JUST OPEN-CARRY. YOU HAVE TO ASK FOR
2 SOME FORM OF CARRY, WHICH IS --

3 THE COURT: AS A FACTUAL MATTER, IT'S BEEN
4 DETERMINED -- AS I SAID AT THE OUTSET, IT'S BEEN
5 DETERMINED IN PERUTA AS TO THE VALIDITY OF THE
6 CLOSED -- THE CONCEALED-CARRY IS VALID UNDER THE SECOND
7 AMENDMENT.

8 YOU JUST REPRESENTED THAT EACH OF THESE
9 PLAINTIFFS HAS APPLIED FOR AND BEEN DENIED A PERMIT.
10 SO THEY'RE NOW SEEKING TO HAVE A RESOLUTION THAT THEY
11 CAN OPEN-CARRY BECAUSE THE STATE LAW VIOLATES THE
12 SECOND AMENDMENT.

13 MR. BRADY: OR THEY WOULD TAKE A
14 CONCEALED-WEAPON PERMIT.

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

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

1 CALIFORNIA HAS CHOSEN FOR PEOPLE CARRYING.

2 THE COURT: THAT WOULD REQUIRE AN AMENDMENT TO
3 THE STATUTE; CORRECT?

4 MR. BRADY: NO.

5 THE COURT: IT WOULDN'T?

6 MR. BRADY: NO.

7 THE COURT: 200,000 IS NOT STATUTORY?

8 MR. BRADY: WELL, THAT'S THE OPEN-CARRY
9 DISTINCTION.

10 I'M SAYING THAT IF THEY WERE ISSUED
11 CONCEALED-WEAPON PERMITS, THEY WOULD --

12 THE COURT: I DON'T THINK WE'RE GETTING
13 ANYWHERE.

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

20 AND PART OF YOUR CHALLENGE IS, THAT IN
21 PERUTA, THE CONCEALED-CARRY WAS UPHELD. AND,
22 ACCORDINGLY, GIVEN THAT YOUR CLIENTS HAVE SOUGHT AND
23 BEEN DENIED CLOSED-CONCEALED CARRY, THAT'S NOT A REMEDY
24 TO THEM. I DON'T SEE WHAT FURTHER REMEDY THERE IS
25 AGAINST THE SHERIFF.

1 AS OPPOSED TO, FOR EXAMPLE, IF THE
2 STATUTE WERE AMENDED, AND THE SHERIFF WAS GIVEN
3 AUTHORITY TO DO SOMETHING WITH RESPECT TO OPEN-CARRY,
4 AND HE ALLEGEDLY DIDN'T DO WHAT HE SHOULD HAVE DONE,
5 THEN YOU COULD CHALLENGE HIS CONDUCT. BUT I DON'T SEE
6 IT OTHERWISE. I DON'T.

7 AM I MISSING SOMETHING?

8 MR. EISENBERG -- EXCUSE ME, MS. CHOI?

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

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

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

23 MR. BRADY: YOUR HONOR, I BELIEVE THAT YOU
24 WOULD NEED TO TAKE A LOOK AT WHAT THE SEVENTH CIRCUIT
25 DID IN ILLINOIS. IT WAS MUCH EASIER IN THAT INSTANCE

1 BECAUSE IT AS WAS A CLEAR-CUT, COMPLETE BAN WITH ONE
2 STATUTE. SO IT WAS EASY FOR THE COURT TO FASHION A
3 REMEDY.

4 BUT, HERE, UNFORTUNATELY, WE DON'T HAVE
5 THAT EASY OF A SCHEME BECAUSE THE STATE OF CALIFORNIA
6 HAS DECIDED TO BREAK THINGS UP AND IMBUE SHERIFFS WITH
7 THE AUTHORITY.

8 THE COURT: THAT'S EXACTLY WHAT -- I AGREE
9 WITH YOU, WHAT YOU JUST SAID, THE STATE OF CALIFORNIA
10 HAS.

11 MR. BRADY: CORRECT.

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

17 MR. BRADY: THAT'S CORRECT.

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

20 THE COURT: ISSUE CONCEALED --

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

23 AND SO ALL I'M SAYING IS, IF HE WERE TO
24 NOT REFUSE, THEN PLAINTIFFS WOULD NOT HAVE AN
25 OPEN-CARRY CHALLENGE EITHER.

1 IN OTHER WORDS, IF THEY WERE GIVEN THE
2 CONCEALED-WEAPON PERMITS --

3 THE COURT: BUT HE DOESN'T HAVE AUTHORITY TO
4 DO THAT BECAUSE THE STATUTE DOESN'T ALLOW HIM TO DO
5 THAT --

6 MR. BRADY: IF THE SHERIFF WANTED TO ISSUE A
7 CONCEALED-WEAPON PERMIT --

8 THE COURT: IN PERUTA, YOU CHALLENGED THE
9 CONCEALED-CARRY; CORRECT?

10 MR. BRADY: CORRECT.

11 THE COURT: WERE THE PARTIES THE SAME?

12 MR. BRADY: NO. SAN DIEGO COUNTY. AND THIS
13 IS L.A. COUNTY.

14 THE SHERIFF DOES HAVE THE DISCRETION,
15 YOUR HONOR, TO ISSUE CONCEALED-WEAPON PERMITS TODAY.

16 THE COURT: BUT YOU'RE NOT SEEKING, IN THIS
17 CASE, TO CHALLENGE THE DENIAL OF THE CONCEALED-WEAPONS
18 PERMITS, ARE YOU?

19 MR. BRADY: NO.

20 THE PLAINTIFFS HERE ARE SOLELY SEEKING
21 SOME WAY TO CARRY, WHETHER THAT'S OPEN OR CONCEALED.
22 THAT'S UP TO THE GOVERNMENT --

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

25 YOU CANNOT GET AN OPEN-CARRY FROM THE

1 SHERIFF.

2 AND IF YOU CONTEND THAT THE SHERIFF
3 IMPROPERLY DENIED CONCEALED-CARRY, THEN DON'T YOU HAVE
4 TO PURSUE THAT CLAIM AND SAY THE SHERIFF IMPROPERLY
5 DENIED OUR PERMITS BASED ON THE STANDARDS OF PERUTA?

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

9 THE COURT: SO YOU'RE CHALLENGING MORE THAN
10 THE STATE STATUTE?

11 YOU'RE CHALLENGING THE SHERIFF'S DECISION
12 TO DENY CONCEALED PERMITS TO THESE INDIVIDUAL
13 PLAINTIFFS?

14 MR. BRADY: CORRECT.

15 THE COURT: AND YOU HAVE -- OKAY.

16 MR. BRADY: CORRECT, AS A WHOLE.

17 THE COURT: THAT'S NOT AS A WHOLE. THAT'S NOT
18 THE QUESTION.

19 I'M NOT GOING TO AGREE WITH YOU AS A
20 WHOLE. I THINK WE'VE BEEN BACK AND FORTH ON THIS. I
21 DON'T AGREE WITH YOU AT ALL.

22 OKAY. THE NINTH CIRCUIT HAS DETERMINED
23 THAT THE CONCEALED-CARRY STATUTE DOESN'T VIOLATE THE
24 SECOND AMENDMENT. THAT IS NOT TO BE RELITIGATED.

25 TO THE EXTENT THAT YOU'RE SEEKING TO

1 CHALLENGE THE CALIFORNIA STATUTE ON OPEN-CARRY, THAT'S
2 A STATE ACTOR, THE STATE STATUTE. THE STATE HAS MADE A
3 DECISION, AND THAT'S THE ONLY APPROPRIATE DEFENDANT.

4 NOW, TO THE EXTENT THAT YOU'RE SEEKING TO
5 CHALLENGE THE DETERMINATION BY THE SHERIFF NOT TO ISSUE
6 CONCEALED CARRIES TO THESE INDIVIDUALS BASED ON FACTS
7 THAT GO BEYOND PERUTA, I UNDERSTAND THAT THAT MIGHT BE
8 A CLAIM.

9 IS THAT WHAT YOU'RE DOING?

10 MR. BRADY: WELL, WE ARE SAYING THAT EITHER
11 THEY NEED TO BE ISSUED THESE PERMITS OR THEY NEED TO BE
12 ALLOWED TO CARRY OPENLY.

13 THE COURT: THAT'S NOT MY QUESTION. MY
14 QUESTION IS PRETTY SIMPLE.

15 DO YOU CONTEND THAT THERE'S A -- THAT
16 THERE'S JURISDICTION HERE IN THIS CASE TO DETERMINE
17 WHETHER THE SHERIFF IMPROPERLY DECLINED TO ISSUE
18 CONCEALED PERMITS TO THE INDIVIDUAL PLAINTIFFS?

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

20 THE COURT: OKAY.

21 MR. BRADY: BUT, UNFORTUNATELY, PERUTA WOULD
22 PRECLUDE YOUR HONOR FROM FORCING THE SHERIFF TO ISSUE
23 THOSE PERMITS.

24 THE COURT: WHAT IF THE SHERIFF HAS DISCRETION
25 TO ISSUE CONCEALED PERMITS, WHICH THE SHERIFF DOES;

1 CORRECT?

2 MR. BRADY: CORRECT.

3 THE COURT: AND THE SHERIFF -- DOES THE
4 SHERIFF HAVE STANDARDS THAT THE SHERIFF USES IN ISSUING
5 CONCEALED PERMITS?

6 MS. CHOI: YES, YOUR HONOR. PER THE
7 CALIFORNIA STATUTE, THE SHERIFF MAY ISSUE
8 CONCEALED-CARRY PERMITS ON A SHOWING OF GOOD CAUSE.
9 AND IT'S LEFT TO THE INDIVIDUAL COUNTY SHERIFFS TO
10 DETERMINE WHAT GOOD CAUSE IS.

11 THE COURT: THAT'S FINE.

12 SO IF THESE INDIVIDUAL PLAINTIFFS HAVE
13 APPLIED FOR CONCEALED-CARRY PERMITS AND THE SHERIFF HAS
14 DENIED THEM BASED ON A DETERMINATION, APPARENTLY, THAT
15 THE SHERIFF BELIEVED THERE WAS NOT GOOD CAUSE, IS THERE
16 A MEANS FOR JUDICIALLY CHALLENGING THE SHERIFF'S
17 DETERMINATION?

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

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

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

22 MR. BRADY: THAT'S UNDER STATE LAW, YOUR
23 HONOR.

24 WHAT WE ARE ALLEGING IS THAT THERE'S A
25 RIGHT TO BEAR ARMS IN SOME MANNER. AND THE STATE OF

1 CALIFORNIA HAS FASHIONED A SCHEME THAT PRECLUDES BOTH
2 THE OPEN-CARRY AND THE CONCEALED-CARRY.

3 THE COURT: WE'RE GOING TO HAVE TO AGREE TO
4 DISAGREE. I DON'T THINK YOU HAVE PERSUADED ME.

5 TO THE EXTENT THAT --

6 MR. BRADY: WE CAN AGREE --

7 THE COURT: EXCUSE ME, WE CAN AGREE TO
8 DISAGREE. AND YOU HAVE REPEATED THE SAME THINGS A LOT.
9 BUT THE POINT IS, THAT YOU HAVE NOT YET IDENTIFIED ANY
10 REMEDY THAT YOU'RE SEEKING HERE AGAINST THE SHERIFF.

11 THEN WHEN I ASKED WHETHER YOU WERE
12 SEEKING TO HAVE THE SHERIFF'S DECISION TO DENY
13 CONCEALED-CARRY PERMITS TO THE INDIVIDUAL PLAINTIFFS,
14 YOU SAID, YES. BUT, APPARENTLY, THERE'S A DIFFERENT
15 PROCESS FOR DOING THAT.

16 MR. BRADY: WELL, THERE IS A STATE COURT
17 PROCESS FOR, IF THEY DON'T ADHERE TO, BASICALLY, THE
18 ADMINISTRATIVE. BUT THEY ADHERED TO THE ADMINISTRATIVE
19 WAY OF DOING THINGS. THAT'S NOT --

20 THE COURT: THEN THIS CASE IS ABOUT THE STATE
21 OPEN-CARRY LAW AND THE REMEDIES AGAINST THE STATE.

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

23 THE COURT: THE SHERIFF IS NOT A NECESSARY
24 PARTY. I DON'T SEE IT. I DON'T SEE IT.

25 YOU'RE CHALLENGING A STATE STATUTE. AND

1 THE STATE STATUTE REGULATES, AMONG OTHER THINGS,
2 SHERIFFS. A SHERIFF IN A COUNTY OF MORE THAN 200,000
3 CANNOT ISSUE AN OPEN-CARRY PERMIT. A SHERIFF IN A
4 COUNTY OF 200,000 OR LESS CAN -- OR, EXCUSE ME, LESS
5 THAN 200,000 CAN. EACH IS CONTROLLED BY STATE LAW.

6 MR. BRADY: OKAY.

7 THE COURT: YOU'RE CHALLENGING THAT AS PART OF
8 YOUR -- THE CHALLENGE HERE, AND THAT'S FINE. BUT THE
9 SHERIFFS AREN'T THE DECISION-MAKERS. THE STATE IS.

10 MR. BRADY: WELL, THE SHERIFFS ARE THE
11 DECISION-MAKERS UNDER STATE LAW.

12 THE COURT: THEY ARE NOT THE DECISION-MAKERS
13 AS TO OPEN-CARRY.

14 MR. BRADY: CORRECT.

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

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

19 THE COURT: I DON'T SEE THE OTHER REMEDY YOU
20 HAVE. YOU HAVE SPENT, AS YOU SAID, SEVERAL YEARS
21 LITIGATING IN PERUTA THE CONCEALED-CARRY. AND THE
22 NINTH CIRCUIT EN BANC MADE ITS RULING. JUDGE FLETCHER,
23 I BELIEVE, WROTE THE DECISION FOR THE MAJORITY. AND
24 THAT ISSUE HAS BEEN DETERMINED.

25 AND NOW YOU'RE CHALLENGING NOT THE

1 CONCEALED-CARRY, THE OPEN-CARRY, WHICH WAS NOT
2 ADDRESSED IN PERUTA. AND YOU'RE SAYING YOU WISH IT HAD
3 BEEN ADDRESSED, BUT IT WASN'T. SO YOU'RE NOW SEEKING
4 TO HAVE IT ADDRESSED. AND THAT'S FINE. I DON'T HAVE A
5 PROBLEM WITH THAT.

6 AS I STATED, I DON'T THINK YOU HAVE A
7 CLAIM AGAINST THE SHERIFF. THE SHERIFF OF LOS ANGELES
8 HAS NO AUTHORITY UNDER STATE LAW TO ISSUE AN
9 OPEN-CARRY OR ALLOW OPEN-CARRY.

10 MR. BRADY: THAT'S CORRECT, YOUR HONOR. IF
11 YOU'RE LOOKING SOLELY AT OPEN-CARRY --

12 THE COURT: I AM.

13 MR. BRADY: OKAY.

14 THE COURT: I'M LOOKING AT OPEN-CARRY, AS I
15 SAID FROM THE OUTSET, IN THE CONTEXT OF PERUTA, WHICH
16 SAYS THAT THE CONCEALED-CARRY PROCESS DOES NOT VIOLATE
17 THE SECOND AMENDMENT. SO THAT'S A FACT. IT'S PART OF
18 THE CONTEXT. IT'S PART OF THE CONTEXT HERE.

19 BUT I DON'T THINK THERE'S A LEGAL REMEDY
20 THAT YOU HAVE AT THIS POINT SHOWING ME YOU HAVE AGAINST
21 THE SHERIFF OF LOS ANGELES AS OPPOSED TO THE STATE OF
22 CALIFORNIA.

23 SO LET'S MOVE ON.

24 IF I'M LATER PERSUADED IN THE COURSE OF
25 THESE PROCEEDINGS THAT THERE'S A SEPARATE CLAIM OR A

1 CLAIM -- A DISTINCT CLAIM AGAINST THE SHERIFF OF
2 LOS ANGELES, THEN I WOULD ALLOW YOU TO PURSUE THAT.

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

4 WELL, DOES EACH OF YOU HAVE A COPY OF
5 YOUR RULE 16 REPORT?

6 MR. BRADY: YES.

7 MS. CHOI: YES, YOUR HONOR.

8 THE COURT: THANK YOU.

9 WITH RESPECT TO THE DATES -- HERE ARE THE
10 DATES I HAVE IN MIND, MOST OF WHICH TRACK WITH WHAT YOU
11 HAVE PROPOSED:

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

14 NON-EXPERT DISCOVERY TO BE COMPLETED BY
15 JUNE 1, 2017.

16 INITIAL EXPERT DISCLOSURE, JUNE 1, 2017.

17 REBUTTAL EXPERT DISCLOSURE, IF ANY, JUNE
18 30, 2017.

19 COMPLETE EXPERT DISCOVERY BY JULY 28,
20 2017.

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

22 LAST DATE TO HAVE THEM HEARD, OCTOBER 23,
23 2017.

24 ANTICIPATED RULINGS BY NOVEMBER 20, 2017.

25 LAST DATE TO FILE DIRECT TESTIMONY,

1 DECEMBER 4, 2017.

2 LAST DATE TO FILE OBJECTIONS, DECEMBER 8,
3 2017.

4 ANTICIPATED RULINGS ON EVIDENTIARY
5 OBJECTIONS, DECEMBER 15, 2017.

6 COURT TRIAL, FEBRUARY 6, 2018.

7 THEN WHAT I'LL DO IS, I'LL HAVE A STATUS
8 CONFERENCE -- ORDINARILY, I DON'T HAVE FINAL PRETRIAL
9 CONFERENCES IN BENCH TRIAL MATTERS. HOWEVER, IN LIGHT
10 OF THE GAP BETWEEN THE DECEMBER 15 DATE AND THE
11 FEBRUARY 6 DATE, I'M GOING TO -- AT THIS POINT, I'M
12 GOING TO SET A STATUS CONFERENCE FOR DECEMBER 18, 2017
13 AT 1:30 TO DISCUSS THE TRIAL DATE, TO THE EXTENT THAT
14 THERE'S BEEN AN OPPORTUNITY TO DO IT SOONER OR ANY
15 OTHER ISSUES.

16 I'D LIKE A JOINT STATEMENT ONE WEEK
17 BEFORE THAT, BY THE 11TH, JUST IN TERMS OF ANY ISSUES
18 THAT -- OTHER THAN THE EVIDENTIARY OBJECTIONS TO THE
19 DECLARATIONS, ANY OTHER ISSUES THAT EITHER SIDE THINKS
20 NEED TO BE ADDRESSED PRIOR TO TRIAL. AND WE CAN
21 DISCUSS THAT.

22 THE PRINCIPAL CHANGE THAT I MADE TO YOUR
23 PROPOSED DATES WAS COMPLETING EXPERT DISCOVERY IN ABOUT
24 30 DAYS AS OPPOSED TO SIX WEEKS OR SEVEN WEEKS.

25 IS THERE A REASON THAT YOU PROPOSED TO GO

1 FROM JUNE 30 TO AUGUST 21 FOR EXPERT DISCOVERY?

2 MR. EISENBERG?

3 MR. EISENBERG: NO PARTICULAR REASON. JUST TO
4 GIVE US TIME TO TAKE DEPOSITIONS.

5 THE COURT: USUALLY 30 DAYS IS SUFFICIENT IF
6 THERE'S NOT THAT MANY EXPERTS. WE'RE TALKING ABOUT
7 DEPOSITIONS.

8 MR. EISENBERG: WE JUST FIGURED IT WAS SUMMER
9 TIME. THERE MIGHT BE MULTIPLE EXPERTS IN THE CASE. SO
10 WE JUST PICKED THOSE DATES.

11 THE COURT: MR. BRADY?

12 MR. BRADY: YOUR HONOR, I SUBBED IN ON THIS
13 CASE. I DID NOT PREPARE THIS REPORT. I DID
14 FAMILIARIZE MYSELF WITH THE DATES, BUT I'M NOT PREPARED
15 TO ANSWER THAT SPECIFICALLY.

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

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

21 I'M GOING TO ADHERE TO THE DATES THAT
22 I'VE SET, UNLESS ANY PARTICULAR DATE DOESN'T WORK WITH
23 A SCHEDULE THAT ANY COUNSEL HAS.

24 AND I DON'T -- HEARING NONE --

25 MR. EISENBERG: ACTUALLY, YOUR HONOR, WHAT DAY

1 OF THE WEEK IS THE 31ST? I MAY NOT BE AVAILABLE THEN.

2 THE COURT: THE 31ST OF -- WHICH DATE ARE YOU
3 REFERRING TO?

4 MR. EISENBERG: LAST DATE TO FILE MOTIONS.

5 THE COURT: JULY 31. IT'S A MONDAY.

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

8 THE COURT: WHEN ARE YOU LEAVING?

9 MR. EISENBERG: THAT SATURDAY, WHICH WOULD BE
10 THE 29TH.

11 THE COURT: I MEAN, YOU'RE NOT REQUIRED TO
12 FILE IT ON THE 31ST. YOU CAN FILE IT ON THE 28TH
13 BEFORE YOU LEAVE.

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

15 MR. EISENBERG: I PROBABLY CAN, BUT I JUST
16 WOULD PREFER TO HAVE IT ON A DATE THAT DOESN'T CONFLICT
17 WITH MY VACATION.

18 THE COURT: OKAY. I'M USUALLY VERY
19 ACCOMMODATING ON THESE MATTERS, BUT I DON'T REALLY
20 UNDERSTAND THAT ONE.

21 HOW LONG WILL YOU BE GONE?

22 MR. EISENBERG: ONE WEEK.

23 THE COURT: OKAY. I'LL MODIFY THE DATES AS
24 FOLLOWS -- IN TERMS OF THE EXPERT DISCOVERY, I'M NOT
25 PERSUADED THAT IT NEEDS TO BE CHANGED. SO I'M GOING TO

1 ADHERE TO THAT.

2 JUST CHANGING THE FOLLOWING DATES: LAST
3 DATE TO FILE MOTIONS, AUGUST 14, 2017.

4 LAST DATE TO HEAR THEM, NOVEMBER 6, 2017.

5 EXPECTED RULINGS BY DECEMBER 4, 2017.

6 LAST DATE TO FILE DIRECT TESTIMONY,
7 DECEMBER 11, 2017.

8 LAST DATE TO FILE OBJECTIONS, DECEMBER
9 15, 2017.

10 EXPECTED RULINGS BY DECEMBER 19, 2017.

11 JOINT REPORT WITH RESPECT TO ANY OPEN
12 ISSUES TO BE FILED BY JANUARY 2, 2018. AND THERE MAY
13 BE NONE.

14 AND FINAL PRETRIAL CONFERENCE, JANUARY 8,
15 2018 AT 3:00 O'CLOCK.

16 TRIAL DATE AS STATED EARLIER, FEBRUARY 6,
17 2018.

18 NOW, WITH RESPECT TO -- ARE THERE ANY --
19 OTHER THAN -- ARE THERE ANY OTHER ISSUES ON SCHEDULING
20 OR OTHER MATTERS?

21 MR. EISENBERG: YES. THE BOTTOM PART OF THE
22 CHART HERE THAT HAS LIKE DISPOSITIVE MOTIONS, SUMMARY
23 JUDGMENT, ARE THOSE --

24 THE COURT: IT'S MERGED INTO THE DATES THAT I
25 GAVE ALREADY.

1 MR. EISENBERG: OKAY. SO WHAT WOULD BE ON THE
2 TOP OF PAGE 15 OF THE CHART, LIKE ANTICIPATED RULINGS
3 ON ALL MOTIONS, WOULD INCLUDE DISPOSITIVE MOTIONS?

4 THE COURT: CORRECT.

5 MR. EISENBERG: THANK YOU FOR CLARIFYING THAT
6 POINT FOR ME.

7 I WAS WONDERING IF THE COURT IS GOING TO
8 ENTERTAIN ORAL ARGUMENT ON THE EQUAL PROTECTION CLAUSE
9 CLAIM?

10 THE COURT: I CAN -- I'LL CONSIDER THAT. JUST
11 A MINUTE.

12 MR. BRADY, WHAT DOES THE EQUAL PROTECTION
13 CLAUSE CLAIM DO THAT ISN'T DONE BY THE SECOND AMENDMENT
14 CLAIM?

15 MR. BRADY: SURE, YOUR HONOR. I THINK THE
16 KRAMER CASE THAT THE PLAINTIFF CITED IN THEIR
17 OPPOSITION BRIEF IS VERY INSTRUCTIVE. IT'S ESSENTIALLY
18 ON ALL FOUR POINTS, IF IT WASN'T A FIRST AMENDMENT
19 ISSUE VERSUS SECOND AMENDMENT. BUT THAT'S SORT OF
20 IRRELEVANT.

21 EVEN -- THE ARGUMENT IS, EVEN IF THE
22 GOVERNMENT DID NOT HAVE TO ALLOW CARRY OUTSIDE THE
23 HOME, WHETHER IT BE CONCEALED OR OPEN IN ANY FORM, BY
24 ALLOWING SOME TO EXERCISE THAT RIGHT OUTSIDE THE HOME,
25 IT IS AN INFRINGEMENT ON THE EQUAL PROTECTION CLAIM.

1 THIS IS NOT THE SAME EXACT CLAIM AS THE SECOND
2 AMENDMENT.

3 IN OTHER WORDS, IF THE SECOND AMENDMENT
4 ALLOWED THE GOVERNMENT TO BAR CARRY, OKAY, THAT'S FINE.
5 BUT ONCE THE GOVERNMENT ALLOWS CARRY, THEN EQUAL
6 PROTECTION ISSUES ARE TRIGGERED.

7 AND IF YOU LOOK AT THE KRAMER CASE, IT'S
8 ESSENTIALLY, THE FIRST AMENDMENT DOES NOT COMPEL A
9 LOCAL SCHOOL BOARD TO ALLOW THE VOTE ON SCHOOL BOARD
10 OFFICIALS. BUT ONCE THE SCHOOL BOARD DOES HOLD
11 ELECTIONS, THEN FIRST AMENDMENT PROTECTIONS ATTACH.

12 AND I THINK THAT THAT'S IDENTICAL TO THIS
13 SITUATION. THERE'S NO RIGHT TO CARRY OUTSIDE THE HOME,
14 ACCORDING TO THE GOVERNMENT. THERE'S A RIGHT TO BEAR
15 ARMS OUTSIDE THE HOME. BUT THEY'RE ALLOWING SOME
16 PEOPLE TO DO IT IN THE FORM OF CONCEALED-WEAPON PERMITS
17 AND IN THE FORM OF OPEN-CARRY PERMITS.

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

21 THE COURT: I UNDERSTAND.

22 MR. EISENBERG?

23 MR. EISENBERG: IF THERE IS NO SECOND
24 AMENDMENT RIGHT TO CARRY A FIREARM IN PUBLIC, THEN
25 THERE'S NO FUNDAMENTAL RIGHT AT ISSUE FOR EQUAL

1 PROTECTION ANALYSIS.

2 THE PLAINTIFFS HAVE NOT IDENTIFIED A
3 SUSPECT CLASS OF PERSONS THAT IS BEING TREATED
4 DIFFERENTLY THAN ANYONE ELSE.

5 SO, THEREFORE, THE EXTENT THAT -- TO THE
6 EXTENT THAT THERE COULD BE AN EQUAL PROTECTION CLAIM,
7 IT WOULD HAVE TO BE RESOLVED ON A RATIONAL BASIS REVIEW
8 NECESSARILY. AND THAT COULD BE RESOLVED VERY QUICKLY,
9 BUT IT'S ALSO SUBSUMED WITHIN THE SECOND AMENDMENT
10 CLAIM.

11 WE HAVE CITED MANY OTHER CASES THAT SAY,
12 YOU KNOW, IF THEY'RE GOING TO BE GETTING A SECOND
13 AMENDMENT ANALYSIS, THAT'S THE WAY YOU LOOK AT THE
14 CONSTITUTIONAL QUESTION. YOU CHOOSE A LEVEL OF
15 SCRUTINY, IF THERE IS INFRINGEMENT OF THE RIGHT OR THE
16 RIGHT IS IMPLICATED. SO THE EQUAL PROTECTION CLAUSE
17 CLAIM IS ENTIRELY REDUNDANT.

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

19 BUT YOU DO CONCEDE THAT CITIZENS WHO LIVE
20 IN COUNTIES THAT ARE LESS THAN 200,000 IN POPULATION
21 HAVE THE ABILITY TO APPLY TO THE SHERIFF IN THOSE
22 COUNTIES FOR AN OPEN-CARRY PERMIT; CORRECT?

23 MR. EISENBERG: CERTAINLY WE CONCEDE THAT.

24 THE COURT: AND THAT'S DIFFERENT THAN CITIZENS
25 WHO LIVE IN COUNTIES -- LARGER COUNTIES, THEY CANNOT

1 APPLY FOR ONE.

2 MR. EISENBERG: CORRECT, YOUR HONOR.

3 THE COURT: BUT YOU'RE -- SO YOU'RE NOT -- SO
4 THERE COULD BE A BASIS FOR SAYING, THERE'S DIFFERENT
5 CATEGORIES.

6 BUT YOUR POSITION IS, THAT THE LEGAL
7 ANALYSIS AS TO WHETHER THOSE CATEGORIES COULD SUPPORT A
8 HYPOTHETICAL EQUAL PROTECTION CLAIM IS THE SAME
9 ANALYSIS THAT APPLIES UNDER THE SECOND AMENDMENT?

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

13 BUT IF THE CASE IS ALLOWED TO -- IF THAT
14 CLAIM IS ALLOWED TO PROCEED, AS I THINK YOU MIGHT BE
15 INDICATING, THEN IT WOULD NECESSARILY BE A
16 RATIONAL-BASIS-FOR-REVIEW SITUATION.

17 THE COURT: SOMETHING NEW, MR. BRADY?

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

19 TO BE CLEAR, THIS IS A SUSPECT CLASS
20 ANALYSIS UNDER THE EQUAL PROTECTION CLAUSE. THAT'S A
21 SEPARATE CLAIM THAN, YOU ARE TREATING A CLASS
22 DIFFERENTLY ON THE BASIS OF THE ABILITY TO EXERCISE A
23 RIGHT. AND SO THAT IS -- AND THIS IS NOT REDUNDANT.
24 THE CASE THEY'RE TALKING ABOUT IS TEIXEIRA THAT THEY
25 CITE. THEY WHOLLY IGNORE OUR KRAMER ANALYSIS, BOTH

1 DEFENDANTS .

2 THE TEIXEIRA CASE SPECIFICALLY SAID,
3 QUOTE, "THIS IS NOT A SITUATION WHERE ONE GROUP IS
4 BEING DENIED A RIGHT WHILE ANOTHER IS NOT."

5 THAT WAS IN THAT CASE BECAUSE THEY WERE
6 NOT -- NOBODY WAS ALLOWED TO EXERCISE THE RIGHT IN THE
7 TEIXEIRA CASE.

8 HERE, PEOPLE ARE BEING ALLOWED TO CARRY
9 OUTSIDE THE HOME. AND PLAINTIFFS ARE NOT. AND THAT
10 TRIGGERS AN EQUAL PROTECTION ANALYSIS.

11 THE COURT: OKAY. I UNDERSTAND.

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

15 IF THE SHERIFF -- IF I ADHERE TO MY
16 TENTATIVE VIEWS THAT THE SHERIFF IS NOT A PARTY AT THIS
17 TIME AGAINST WHOM RELIEF CAN BE OBTAINED, THE DISMISSAL
18 WOULD BE WITHOUT PREJUDICE TO A LATER MOTION TO AMEND
19 TO ADD THE SHERIFF BASED ON AN ARGUMENT AS TO WHAT --
20 WHY THE RELIEF BEING SOUGHT IN LIGHT OF DISCOVERY OR
21 OTHER DEVELOPMENTS IN THE CASE AGAINST THE SHERIFF IS
22 AVAILABLE.

23 OKAY. YOU HAVE PROPOSED MEETING WITH A
24 MAGISTRATE JUDGE TO TRY TO RESOLVE THIS MATTER; IS THAT
25 RIGHT?

1 MR. EISENBERG: YOUR HONOR, WE ACTUALLY
2 BELIEVE THAT THIS CASE CANNOT BE RESOLVED BY A
3 SETTLEMENT CONFERENCE. THE STATE CANNOT COMPROMISE ON
4 THE MEANING OF THE LAW. SO IT WOULD EITHER BE ONE SIDE
5 COMPLETELY CAPITULATING OR NO SETTLEMENT.

6 MR. BRADY: I AGREE WITH THAT, YOUR HONOR.
7 THIS IS A LEGAL QUESTION DESIGNED TO BE ANSWERED BY THE
8 COURT.

9 THE COURT: THEN AT THIS TIME, I'M NOT GOING
10 TO DIRECT THAT YOU HAVE A SETTLEMENT CONFERENCE BECAUSE
11 I DON'T -- IT'S NOT A FORMALITY. IF YOU -- IF EITHER
12 SIDE LATER BELIEVES THAT SOME INFORMAL RESOLUTION MAY
13 BE POSSIBLE, THEN DISCUSS IT. AND IF YOU WISH TO MEET
14 WITH A MAGISTRATE JUDGE TO DISCUSS THAT OR HAVE A
15 SETTLEMENT CONFERENCE, LET MY CLERK KNOW SO WE CAN
16 ARRANGE THAT.

17 THANK YOU FOR YOUR HELP TODAY.

18 MR. BRADY: THANK YOU, YOUR HONOR.

19 MS. CHOI: THANK YOU.

20 MR. EISENBERG: THANK YOU, YOUR HONOR.

21 THE COURT: ANYTHING ELSE WE NEED TO ADDRESS?

22 MS. CHOI: NO, YOUR HONOR.

23 THE COURT: ALL RIGHT. THANK YOU.

24 (END OF PROCEEDINGS)

25

