No. 16-894

In the Supreme Court of the United States

EDWARD PERUTA, *et al.*,
Petitioners,

v.

STATE OF CALIFORNIA, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE STATE OF CALIFORNIA IN OPPOSITION

XAVIER BECERRA
Attorney General of California
EDWARD C. DUMONT
Solicitor General
DOUGLAS J. WOODS
Senior Assistant Attorney General
MICHAEL J. MONGAN*
KATHLEEN BOERGERS
Deputy Solicitors General

STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
455 Golden Gate Avenue
San Francisco, CA 94102
(415) 703-2548
Michael.Mongan@doj.ca.gov
**Counsel of Record*

February 16, 2017

QUESTION PRESENTED

Whether the Second Amendment protects a specific right to carry a concealed handgun in public spaces in cities and towns, based only on a general desire for self defense.

PARTIES TO THE PROCEEDING

The petition correctly notes the parties to the appeal in *Peruta v. County of San Diego*, CA9 No. 10-56971. On appeal, that case was consolidated for rehearing en banc with *Richards v. Prieto*, CA9 No. 11-16255. The court of appeals issued a single opinion resolving both appeals, and entered judgment in both appeals in the same docket entry. The parties to the *Richards* appeal are plaintiffs-appellants Adam Richards, Brett Stewart, the Second Amendment Foundation, and the Calguns Foundation, Inc., and defendants-appellees Sheriff Ed Prieto and the County of Yolo.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

CONSTITUTIONAL PROVISIONS

STATEMENT

1. Any California resident who is over 18 and not otherwise prohibited from possessing firearms may generally keep or carry a loaded handgun in his home or place of business. Cal. Penal Code §§ 25605, 26035.[1] This includes a temporary residence or campsite. *Id.* § 26055. Related provisions authorize transport of a gun (unloaded and properly secured) to and from authorized places. *See id.* §§ 25505, 25525, 25610. A person may also carry a loaded handgun in many areas, outside incorporated cities, that are not public or where it would be lawful to discharge the weapon. *Id.* §§ 25850(a), 17030. Licensed hunters and fishermen may carry handguns while engaged in those activities. *Id.* §§ 25640, 26366. Individuals in particular situations, such as peace officers, military personnel, and private-security personnel, likewise may carry under various circumstances. *See id.* §§ 25450, 25620, 25630, 25650, 25900, 26030.

California does regulate the carrying of firearms in public spaces in cities and towns. State law generally prohibits the public carrying of a loaded or unloaded handgun, whether open or concealed, in "any public place or on any public street" of incorporated cities. Cal. Penal Code § 25850(a); *see id.* §§ 25400, 26350(a). A similar restriction applies in public places or on public streets in a "prohibited area" of unincorporated territory—that is, an area where it is unlawful to discharge a weapon. *Id.* §§ 25850(a), 26350(a); *see id.* § 17030. There is a general, although narrow, exception allowing the carrying of a

[1] State law defines a "handgun" as "any pistol, revolver, or firearm capable of being concealed upon the person." Cal. Penal Code § 16640(a).

loaded firearm by any individual who reasonably believes that doing so is necessary to preserve a person or property from an immediate, grave danger, while if possible notifying and awaiting local law enforcement. *Id.* § 26045.

California also recognizes that some individuals may need or want to carry a handgun in public in situations not otherwise provided for by law. State law permits any otherwise qualified resident to seek a permit to carry a handgun (normally concealed, although in some circumstances openly), even in an urban or residential area, for "[g]ood cause." Cal. Penal Code §§ 26150, 26155. The state Legislature has delegated the authority to determine what constitutes "good cause" for the issuance of such a permit in particular areas to local authorities, generally county sheriffs or city police chiefs. *See id.* §§ 26150, 26155, 26160.

2. The individual petitioners in this case sought to obtain concealed-carry permits from the sheriff of San Diego County. Pet. App. 206. The sheriff refused to issue the permits based on a policy defining "good cause" to mean some specific "set of circumstances that distinguishes the applicant from other members of the general public and causes him or her to be placed in harm's way"—circumstances that must go beyond a stated desire to carry a weapon in public for the general purpose of self-defense. *Id.* at 207.

Petitioners sued the sheriff and the county, challenging the use of that definition of "good cause." D. Ct. Dkt. No. 25 at 17-18 (amended complaint). They sought injunctive relief prohibiting the defendants from enforcing the good cause requirement "against applicants who seek a [concealed-carry per-

mit] for self-defense and who are otherwise qualified to obtain" such a permit. *Id.* at 23.[2]

The district court granted summary judgment for the defendants, concluding that San Diego's implementation of the good cause requirement did not violate the Second Amendment. Pet. App. 232. Applying intermediate scrutiny, the court concluded that the challenged policy was reasonably related to the "substantial interest in public safety and in reducing the rate of gun use in crime." *Id.* at 224.[3]

3. The court of appeals initially reversed. Pet. App. 89-159. The panel majority reasoned that the Second Amendment provides an individual right to carry a firearm in public for self defense, and that San Diego County's good cause policy, when considered in light of California's other restrictions on the carrying of firearms in public places, impermissibly infringed on that right. *See id.* at 159.

Judge (now Chief Judge) Thomas dissented. Pet. App. 160-204. He concluded that "carrying a concealed weapon in public was not understood to be within the scope of the right protected by the Second

---

[2] At the time of the complaint the good cause requirement was set out in California Penal Code section 12050. That provision has since been renumbered as section 26150. *See generally* Cal. Penal Code §§ 16000-16025 (explaining recodification).

[3] The district court reasoned in part that, as "a practical matter, should the need for self-defense arise," state law did not "restrict[] the open carry of unloaded firearms and ammunition ready for instant loading." Pet. App. 216. While this case was on appeal, state law was amended to further restrict unloaded open carry. *See* Cal. Penal Code § 26350(a); *see also* Pet. App. 63-64, 66-67 (Callahan, J., dissenting); *id.* at 84-86 (N.R. Smith, J., dissenting).

Amendment at the time of ratification" (*id.* at 186); and that, in any event, San Diego's implementation of the good cause standard would withstand intermediate scrutiny (*id.* at 192).

4. The court of appeals granted rehearing en banc, and an en banc panel affirmed the judgment of the district court. Pet. App. 1-45.[4]

Considering first the scope of the challenge before it, the court recognized petitioners' contention that "California's restrictions on concealed and open carry of firearms, taken together, violate the [Second] Amendment." Pet. App. 10. It observed, however, that petitioners "contend that there would be sufficient opportunity for public carry of firearms … if the good cause requirement for concealed carry," as implemented in San Diego County, were eliminated; contend that "the count[y's] good cause requirements for concealed carry violate the Amendment"; "allege only that they have sought permits to carry concealed weapons"; and "seek relief only against the policies requiring good cause for such permits." *Ibid.* In light of petitioners' allegations and demand for relief, the court saw no need to reach the broader question "whether the Second Amendment protects some ability to carry firearms in public[.]" *Ibid.* It addressed "only the question whether the Second Amendment protects, in any degree, the ability to carry concealed firearms in public." *Id.* at 11.

---

[4] The en banc court consolidated the *Peruta* appeal with *Richards v. Prieto*, CA9 No. 11-16255, involving a similar challenge to the good cause requirement as implemented by the sheriff of Yolo County. *See* Pet. App. 2-5, 45; *Peruta* CA9 Dkt. No. 200. The court also granted the State's motion to intervene in the *Peruta* appeal. Pet. App. 39-42.

As to that narrower question, the court considered both this Court's precedents and other evidence concerning the historical scope of the right to bear arms, including in England and colonial America and at the time the Second and Fourteenth Amendments were adopted. *See* Pet. App. 10-37. "Based on the overwhelming consensus of historical sources," the court concluded that "the protection of the Second Amendment—whatever the scope of that protection may be—simply does not extend to the carrying of concealed firearms in public by members of the general public." *Id.* at 11; *see also id.* at 38. Accordingly, "any prohibition or restriction a state may choose to impose on concealed carry—including a requirement of 'good cause,' however defined—is necessarily allowed by the Amendment." *Id.* at 38-39.

Judge Graber, joined by Chief Judge Thomas and Judge McKeown, concurred in the majority opinion, writing separately "only to state that, even if we assume that the Second Amendment applied to the carrying of concealed weapons in public, the provisions at issue would be constitutional." Pet. App. 46. She reasoned that, under intermediate scrutiny, "[s]uch restrictions strike a permissible balance between 'granting handgun permits to those persons known to be in need of self-protection and precluding a dangerous proliferation of handguns on the streets.'" *Ibid.* (quoting *Woollard v. Gallagher*, 712 F.3d 865, 881 (4th Cir. 2013)). The court's opinion, in turn, noted that "if [it] were to reach" that question, it "would entirely agree with the answer the concurrence provides." Pet. App. 44.

Judge Callahan, joined by Judge Bea and largely joined by Judges Silverman and N.R. Smith, dissented. Pet. App. 54-76. Reading this Court's cases to "instruct that the right to bear arms extends beyond

the home" (*id.* at 55), Judge Callahan reasoned that States may "choose between regulating open carry or concealed carry" (*id.* at 58-59), but may not "destroy the right to bear and carry arms" (*id.* at 60). Viewing California's overall regulatory framework as a "choice to prohibit open carry," she would have struck down San Diego's implementation of the good cause requirement for issuance of a concealed-carry permit as "tantamount to [a] complete ban[] on the Second Amendment right to bear arms outside the home for self-defense[.]" *Id.* at 64-65; *see id.* at 61-74.

Judge Silverman, joined by Judge Bea, wrote separately (Pet. App. 77-81) to explain his view that "the challenged laws [would] not survive any form of heightened scrutiny" (*id.* at 77). Judge N.R. Smith wrote separately (*id.* at 82-86) to express his views that the court should review a county's good-cause policy "in the context of the underlying statutory scheme as a whole" (*id.* at 83); that both the statutory framework and relevant Ninth Circuit precedent had changed significantly since the time of the district court's decision (*id.* at 84); and that "the better approach would be to remand for the district court to consider the case under the new legal framework" (*ibid.*).

ARGUMENT

The court of appeals' decision correctly resolves the only question it addresses. It does not create or deepen any conflict among the lower courts, or impair the flexibility of States in deciding how to accommodate any public-carry right that may be protected by the Second Amendment. As to broader issues not reached by the decision below, this Court has previously denied review in three cases assessing similar state regulations on public carry. There is no reason for a different result here, especially while other

courts continue to consider comparable issues. In the continued absence of any conflict, review in this case would be at best premature.

1. The court of appeals framed the question in this case as "whether the Second Amendment protects, in any degree, the ability to carry concealed firearms in public." Pet. App. 11. It held "only that there is no Second Amendment right for members of the general public to carry concealed firearms in public." *Ibid.*

a. That limited holding is correct, in light of the long history of restrictions on concealed carry marshaled in the court's opinion. *See* Pet. App. 15-37. This Court in *Heller* likewise pointed to "prohibitions on carrying concealed weapons" as the most obvious example of how "the right secured by the Second Amendment is not unlimited." *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008); *see also Robertson v. Baldwin*, 165 U.S. 275, 282 (1897) (observing that the Second Amendment "is not infringed by laws prohibiting the carrying of concealed weapons"). The holding below also accords with that of the only other federal appellate decision directly addressing this question. *See Peterson v. Martinez*, 707 F.3d 1197, 1211 (10th Cir. 2013) ("[T]he Second Amendment does not confer a right to carry concealed weapons."). Indeed, even petitioners do not appear to disagree with how the court answered the concealed-carry question, considered on its own. *See* Pet. 1, 18, 26.

b. Petitioners contend instead that the court of appeals should have addressed broader questions. *See, e.g.*, Pet. 27-28. They urge this Court to grant review to consider "whether, and to what extent, the Second Amendment applies outside the home" (*id.* at 2), and whether California's overall framework of regulations on public carry—either open or con-

cealed—is consistent with the Second Amendment (*see id.* at 14, 18-19).

The court of appeals reasonably declined to address those questions, in light of the way petitioners framed their case and the relief they sought. As the court observed, petitioners "allege[d] only that they ha[d] sought permits to carry concealed weapons," and sought "relief only against the policies requiring good cause for such permits." Pet. App. 10. That description is faithful to petitioners' complaint. *See* D. Ct. Dkt. No. 25 (amended complaint). Whatever the breadth of their underlying theories (*see* Pet. 27-28), the injury petitioners alleged was the denial of concealed-carry permits (*see* D. Ct. Dkt. No. 25 at 3-9, 18); and the relief they sought was an order allowing them to obtain such permits, overriding California's statutory good cause requirement as implemented by the San Diego sheriff (*see id.* at 23).

The court of appeals thus resolved this case by focusing on whether the Second Amendment protects "the ability to carry concealed firearms in public." Pet. App. 11. That cautious approach is consistent with the view expressed by other courts that the general question of the Second Amendment's application outside the home is "a vast *terra incognita* that courts should enter only upon necessity and only then by small degree." *United States v. Masciandaro*, 638 F.3d 458, 475 (4th Cir. 2011) (Wilkinson, J., writing for the Court as to Part III.B); *see also Drake v. Filko*, 724 F.3d 426, 430-431 (3d Cir. 2013) (quoting *Masciandaro* and reserving general question); *Woollard v. Gallagher*, 712 F.3d 865, 874-876 (4th Cir. 2013) (similar); *Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 89 (2d Cir. 2012) (similar).

Accordingly, the only constitutional question answered by the decision below is whether the Second

Amendment protects a specific right to carry concealed weapons in public. *See* Pet. App. 10-11. While petitioners seek to present different and broader questions, this Court normally does "not decide in the first instance issues not decided below." *NCAA v. Smith*, 525 U.S. 459, 470 (1999). There is no reason to depart from that sound practice here.

2. The decision below is not part of any "four-way split of authority" over "whether … the Second Amendment applies outside the home." Pet. 2-3; *see id.* at 19.

As petitioners note (Pet. 16), one federal court of appeals has squarely held that the individual Second Amendment right recognized in *Heller* and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), protects at least some conduct outside the home. *See Moore v. Madigan*, 702 F.3d 933, 942 (7th Cir. 2012). Other courts have not squarely addressed the issue. Some decisions have focused narrowly on specific conduct outside the home, holding it unprotected. *See* Pet. App. 10-11; *Peterson*, 707 F.3d at 1211. Others have assumed for purposes of analysis that the Second Amendment applies outside the home, while going on to hold that particular state restrictions on public carry were nonetheless permissible. *See Drake*, 724 F.3d at 431; *Woollard*, 712 F.3d at 876; *Kachalsky*, 701 F.3d at 89. Petitioners clearly disagree with these courts' understanding and application of the Second Amendment (*see, e.g.*, Pet. 2, 15, 17), but that question is different from the one petitioners seek to present here. Moreover, petitioners' suggestion that the challenged legal regimes "cannot possibly withstand constitutional scrutiny" if the Second Amendment applies outside the home (Pet. 15) misunderstands this Court's precedents. The Court has made clear that even where the Amendment ap-

plies, it does not confer a right to "carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Heller*, 554 U.S. at 626. A conclusion or assumption that the Second Amendment applies outside the home begins, rather than ends, the inquiry into the constitutionality of a particular regulatory framework. *See also* Pet. App. 46-53 (Graber, J., concurring).

The three state cases that petitioners cite likewise do not hold "that the Second Amendment has *no* application outside the home." Pet. 16. The first, *Commonwealth v. Gouse*, 965 N.E.2d 774, 785-786 (Mass. 2012), upheld a conviction under a statute that prohibited carrying an unlicensed firearm outside the home. The passage cited by petitioners observed only that the case did not involve the particular Second Amendment right at issue in *Heller* and *McDonald—i.e.*, the "right 'to possess a handgun in the home for the purposes of self-defense.'" *Id.* at 786. Similarly, in *Williams v. State*, 10 A.3d 1167, 1177 (Md. 2011), a defendant who was convicted of carrying a handgun in public without a permit argued that his conviction fell "within the ambit of *Heller* and *McDonald*." The court rejected that argument, noting that *Heller* and *McDonald* focused on "statutory prohibitions against home possession." *Ibid.* The defendant in the third case, *Mack v. United States*, 6 A.3d 1224, 1226 (D.C. 2010), was convicted of carrying an ice pick in public. Because he failed to preserve any Second Amendment defense at trial, the appellate court "review[ed] only for plain error." *Id.* at 1234. After noting that this Court has left "open substantial questions as to how far *Heller*'s analysis properly extends," the court held only that "it is neither 'clear' nor 'obvious' that the Second Amendment applies to the situation presented in this appeal." *Id.* at 1235. None of these cases involved an

extended discussion or analysis of the scope of the Second Amendment, and none of them held that it never applies outside the home.

3. Petitioners urge the Court to review their challenge to concealed-carry restrictions in the context of California's entire framework of public-carry regulation, and on the understanding that "open carry is forbidden by state law." Pet. i; *see also id.* at 14-15, 17-18. That understanding is not correct, and petitioners' broader argument concerning California's entire regulatory framework implicates no conflict among the lower courts.

Petitioners argue that California both "prohibits open carry" and "bans the concealed carry of firearms outside the home" without a license, leaving "ordinary, law-abiding residents" with no "lawful means of carrying a handgun … outside the home for self-defense." Pet. 1, 5, 16; *see id.* at 18, 25, 33. California does restrict the carrying of guns in public places in cities and towns, *see* Cal. Penal Code § 25850(a)—where the presence of private arms (open or concealed) would present the greatest "risks to other members of the public who use the streets and go to public accommodations" (Pet. App. 224). But public carry is allowed in many unincorporated areas in the State. Cal. Penal Code § 25850(a). It is authorized in other places in various situations, such as while hunting or fishing, *id.* § 25640, or camping, *id.* § 26055, or in some circumstances to protect against an immediate danger to person or property, *id.* § 26045. *See* Pet. 4-5 & nn.1-3. Even in the public spaces of cities and towns, in appropriate circumstances consistent with local policy, individual residents may obtain concealed- (or sometimes open-) carry permits. *See* Cal. Penal Code §§ 26150, 26155. The fact that petitioners themselves are not author-

ized to carry loaded handguns in public whenever and wherever they want does not amount to a "ban" on public carry (*see* Pet. 5 & n.3), or mean that the State has "denied any outlet" for Second Amendment rights (*id*. at 33).[5]

As petitioners eventually acknowledge, three other circuits have considered Second Amendment challenges to state systems of public-carry regulation that petitioners describe as "indistinguishable from the one challenged here." Pet. 17. In each case the court assumed the Second Amendment applied to public-carry restrictions, applied intermediate scrutiny, and upheld the challenged regulations.

In *Kachalsky v. County of Westchester*, the Second Circuit upheld a New York statute "requiring an applicant to demonstrate 'proper cause' to obtain a license to carry a concealed handgun in public." 701 F.3d at 83. It concluded that "New York has substantial … governmental interests in public safety and crime prevention," and that "the proper cause requirement is substantially related to these interests." *Id*. at 97. Similarly, the Third Circuit rejected a challenge to a New Jersey statute requiring applicants to "demonstrate a 'justifiable need' to publicly carry a handgun for self-defense." *Drake*, 724 F.3d at 429. It reasoned that this requirement is the type of

---

[5] As pointed out by dissenting judges below, "the underlying statutory scheme has changed dramatically since the district court's decisions" in this case and the related *Richards* matter. Pet. App. 66 (Callahan, J., dissenting); *see also id*. at 63-64; *id*. at 84-86 (N.R. Smith, J., dissenting) ("[W]e would benefit greatly from the district court's expertise in developing the record and applying the appropriate standards in light of California's significant intervening change in its legal framework."); note 3, *supra*.

"'presumptively lawful,' 'longstanding' regulation" that "does not burden conduct within the scope of the Second Amendment's guarantee." *Ibid.* In the alternative, the court concluded that the statute would withstand intermediate scrutiny, in light of the reasonable fit "between New Jersey's individualized, tailored approach" to public carry and its "substantial and important interest in protecting its citizens' safety." *Id.* at 439, 437. Finally, the Fourth Circuit upheld Maryland's requirement that an applicant must demonstrate a "'good and substantial reason'" for a public-carry permit, on the view that this requirement is "reasonably adapted" to "Maryland's concomitant interests in protecting public safety and preventing crime—particularly violent crime committed with handguns." *Woollard*, 712 F.3d at 868, 876.

Thus, although the general permissibility of an overall regulatory system like California's is not an issue presented in this case, it is one on which the circuits are in agreement.[6] This Court denied petitions for certiorari in *Drake*, *Woollard*, and *Kachalsky*.[7] Nothing has changed to warrant a different result in this case, in which the court below did not even squarely address the issue.

---

[6] The Seventh Circuit struck down an Illinois public-carry statute in *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012). Noting that Illinois was "the *only* state" with "a flat ban on carrying ready-to-use guns outside the home," *id.* at 940, it distinguished laws that require "a permit to carry a concealed handgun in public" and that "place[] the burden on the applicant to show that he needs a handgun to ward off dangerous persons," *id.* at 941—that is, laws like those in New York, New Jersey, Maryland, and California.

[7] *See Drake*, No. 13-827 (cert. denied May 5, 2014); *Woollard*, No. 13-42 (cert. denied Oct. 15, 2013); *Kachalsky*, No. 12-845 (cert. denied Apr. 15, 2013).

Indeed, the D.C. Circuit is currently considering two appeals concerning a District of Columbia law that restricts concealed-carry licenses to applicants with a "good reason to fear injury" or "any other proper reason for carrying a pistol." D.C. Code § 22-4506; *see Grace v. District of Columbia*, CADC No. 16-7067 (argued Sept. 20, 2016); *Wrenn v. District of Columbia*, CADC No. 16-7025 (same). The plaintiffs in those cases argue, like petitioners here, that the Second Amendment protects a general right to carry handguns in public for self-defense, which the District is violating through a combination of prohibiting open carry and requiring particularized reasons for the issuance of a concealed-carry license.[8] If the D.C. Circuit upholds the laws at issue in *Grace* and *Wrenn*, there will still be no conflict warranting this Court's intervention. If that court addresses the overall public-carry issue and strikes down the laws, in conflict with the decisions of other courts, then its decision will provide a better vehicle for review than this one. In any event, until the D.C. Circuit has had a chance to reach a final result in *Grace* and *Wrenn*, further review of the present case would be at best premature.

4. Finally, petitioners argue repeatedly that the decision below "effectively deprives states of the flexibility … to choose whether to allow open carry, concealed carry, or both." Pet. 2; *see also, e.g.*, *id.* at 15,

---

[8] Some of the counsel for petitioners in this case have also filed a new case in which they argue that California's "regulatory scheme *as a whole* violates the Second Amendment because it prevents [the plaintiffs] from carrying *either openly or concealed*." *Flanagan v. Harris*, C.D. Cal. No. 16-cv-6164, Dkt. No. 31 at 1 (emphasis in original). The plaintiffs in that case acknowledge that "the en banc decision in *Peruta* expressly reserved that question[.]" *Ibid.*

30-32. But nothing in the decision would prevent a State from accommodating any Second Amendment right to public carry by permitting concealed carry, if state policymakers preferred that approach. Here, petitioners sought to force the issuance of concealed-carry permits, and the court of appeals held that the Second Amendment does not protect a right to concealed carry. *See* Pet. App. 10-11, 43-44.[9] While the court remarked that, if there is a right to public carry, "it is only a right to carry a firearm openly" (*id*. at 44), it did not confront a claim that any such right could be accommodated only by permitting open carry.[10] Surely a State could, at least in most circumstances, avoid substantially burdening any public-carry right by permitting concealed-carry, if it chose to do so. The decision below holds only that the State cannot be forced to make that particular choice.

---

[9] The State made clear in its briefing below that the remedy petitioners sought—forced issuance of concealed-carry permits—would have been inappropriate even if the court had construed petitioners' claims broadly and concluded that California's overall regulation of public carry was unduly restrictive. *See* CA9 Dkt. No. 261-1 at 9 n.2. The proper remedy would instead have been to clarify the law and then remand to allow the state legislature to decide how to comply with the constitutional limitations identified by the court. *Ibid*. (citing *Moore v. Madigan*, 702 F.3d at 942.)

[10] A case making this precise claim—that the Second Amendment requires the State to allow an individual to carry openly, whether or not it would allow concealed-carry—is currently pending before the Ninth Circuit. *Nichols v. Harris*, CA9 No. 14-55873 (currently being briefed on the merits).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
EDWARD C. DUMONT
Solicitor General
DOUGLAS J. WOODS
Senior Assistant Attorney General
MICHAEL J. MONGAN
KATHLEEN BOERGERS
Deputy Solicitors General

February 16, 2017