Case No. 18-55717

In the United States Court of Appeals
for the Ninth Circuit

MICHELLE FLANAGAN, et al.,
Plaintiffs-Appellants,

v.

XAVIER BECERRA, et al.,
Defendants-Appellees.

On Appeal from the United States District Court
for the Central District of California
(CV 16-06164-JAK-AS)

APPELLANTS' OPENING BRIEF

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October 2, 2018

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1(a), the California Rifle & Pistol Association, Inc., certifies that it is a nonprofit organization. It has no parent corporation and no stock, so no publicly held corporation owns more than ten percent of its stock.

Date: October 2, 2018

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INTRODUCTION

The Second Amendment guarantees that "the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. The Supreme Court has thrice affirmed, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *Caetano v. Massachusetts*, -- U.S. --, 136 S. Ct. 1027 (2016), that the core of the Second Amendment guarantee is the right to self-defense—a right that necessarily extends beyond the confines of one's home, as this Court recently concluded.

Appellants are law-abiding Los Angeles County residents who seek to protect themselves and their loved ones by carrying handguns outside their homes. Yet the State of California does not provide them any lawful means to do so. To the contrary, the State prohibits the carrying of handguns—either openly or concealed—without a license in effectively all areas people frequent, and it gives county sheriffs unfettered discretion to deny carry licenses to anyone that they conclude lacks "good cause" to exercise their Second Amendment rights. The Sheriff of Los Angeles concluded that Appellants' desire to carry firearms for self-defense does not qualify as "good cause," and so denied their license applications. Appellants are thus left with no lawful means to carry a firearm outside their homes "for the core lawful purpose of self-defense." *Heller*, 554 U.S. at 630.

As a panel of this Court correctly recognized in *Young v. Hawaii*, 896 F.3d 1044 (9th Cir. 2018), such a restrictive carry regime cannot pass constitutional muster. Indeed, a law that flatly prohibits ordinary law-abiding citizens from

exercising their core constitutional right to bear a firearm for self-defense is unconstitutional no matter what level of scrutiny applies, as the whole point of enshrining rights in the Constitution is to protect the government from prohibiting their exercise. The unconstitutionality of California's regime thus follows inexorably from the text of the Second Amendment and the adjudicated unconstitutionality of Hawaii's, as each regime amounts to a destruction of a fundamental constitutional right.

JURISDICTIONAL STATEMENT

The district court had jurisdiction over this constitutional challenge under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3). The district court entered a final order of judgment dismissing all claims against Defendant Attorney General Xavier Becerra on May 24, 2018. E.R.II 53. Appellants appealed that judgment on June 4, 2018. E.R.II 47-51. On June 12, 2018, the district court entered an amended final order of judgment dismissing all claims against all defendants. E.R.I 1-2. Appellants filed an amended notice of appeal on June 15, 2018, under Federal Rules of Appellate Procedure, Rule 4, subsections (a)(1)(A) and (a)(4)(vi). E.R.II 42-46. This Court has jurisdiction under 28 U.S.C. Section 1291.

STATEMENT REGARDING ADDENDUM

An addendum reproducing relevant constitutional and statutory provisions is bound with this brief.

STATEMENT OF THE ISSUES PRESENTED

1. Does the Second Amendment protect the right to carry a firearm outside the home for self-defense?

2. Does California's restrictive firearms carry regime, which effectively prohibits ordinary, law-abiding citizens like Michelle Flanagan and her fellow Appellants from carrying firearms outside the home for self-defense, violate the Second Amendment?

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

A. The Challenged Provisions

California imposes extensive regulations on firearms. To obtain a firearm, an individual must first secure a Firearm Safety Certificate from the California Department of Justice by passing a test covering both firearm safety and the many state and federal laws governing gun ownership. Cal. Penal Code §§ 31610-31670. Next, to begin the purchase process, a citizen must go to a licensed firearm dealer, present "clear evidence of identity and age," offer proof of California residency, and complete federal and state forms designed to confirm that the purchaser is eligible for firearm possession. *Id.* §§ 16400, 26800-26850; *see also* Cal. Code Regs. tit., § 4045. The purchaser must then wait ten days, during which time the DOJ performs a background check. The DOJ will deny the transfer if the purchaser is legally ineligible to possess a firearm. Cal. Penal Code §§ 27540, 28220. If a citizen clears all of these hurdles, he still cannot receive the firearm until he proves to the

licensed dealer a command of the protocol for safely handing it. *Id.* §§ 26850-26860.

Upon delivery, the firearm must come with a DOJ-approved firearm safety device (unless the buyer owns an approved gun safe and signs an affidavit to that effect) and certain warning labels. *Id.* § 23635 (b); *see also id.* §§ 23620-23690. The firearm also is registered to the purchaser in a DOJ database. *Id.* §§ 33850. After the purchaser has obtained the firearm, he remains subject to further restrictions on how he may store it, *see id.* §§ 25000, 25100-25140, 25200-25225, and must also ensure compliance with local ordinances, which often impose significant additional requirements on lawful gun ownership.

Appellants have not challenged any of these many laws. This case deals only with the provisions of California law that prevent Appellants and other ordinary, law-abiding adults who clear all those hurdles from carrying firearms outside their homes for self-defense. In California, it is generally illegal to carry "a loaded firearm on the person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory." *Id.* § 25850. A "prohibited area" is "any place where it is unlawful to discharge a weapon," Cal. Penal Code § 17030—which is almost everywhere people frequent in California.

For example, courts have defined "public place" broadly to include all public roads and highways, *see, e.g.*, *People v. Belanger*, 243 Cal. App. 2d 654, 657 (1966), some private businesses, *see, e.g.*, *In re Zorn*, 59 Cal.2d 650 (1963)

(barbershop is a "public place"), and even one's own yard and driveway, *People v. Cruz*, 44 Cal.4th 636, 674 (2008); *People v. Yarbough*, 169 Cal. App. 4th 303, 318-19 (2008). A complex web of state, federal, and local restrictions further renders large swaths of unincorporated territory "prohibited area." For example, it is illegal under state law to discharge a firearm within 150 yards of buildings absent prior permission of the lawful possessor, Cal. Fish & Game Code § 3004(a), or to discharge "any firearm from or upon a public road or highway," Cal. Penal Code § 374c, thus making it illegal to carry in any of those places. California and federal law also prohibit firearm possession in many other specific areas.[1] And California allows local governments to enact ordinance creating additional no-carry zones by prohibiting the possession or discharge of firearms in many places law-abiding citizens are likely to frequent. *See, e.g.*, San Mateo Cty., Cal., Ordinance 3.68.080(o) (possession); Los Angeles Cty., Cal., County Code of Ordinances 13.66.040 (generally prohibiting discharge within 0.5 miles of any house, camp, place of human habitation, public highway, road, street, way, park, or premises); 13.66.050 (generally prohibiting discharge along or across any public highway, road, street, or way); 13.66.130–13.66.563 (prohibiting firearm discharge in dozens of designated districts) (available at https://library.municode.com/ca/los_angeles_county/codes/code_of_ordinanc

[1] *See, e.g.*, Cal. Penal Code § 626.9 (within 1,000 feet of a public or private K-12 school); Cal. Fish & Game Code § 10500 (state game refuges); Cal. Code Regs. tit. 14, § 4313 (state parks); Cal. Code Regs. tit. 14, § 550 (cc) (state wildlife areas); 36 C.F.R. § 261.10(d) (national forest road, cave, or within 150 feet of a building); 50 C.F.R. § 27.41 (national wildlife refuges).

es?nodeId=TIT13PUPEMOWE_DIV8WE_CH13.66FIBOAR). All told, these restrictions combine to prohibit the carrying of a firearm virtually anywhere one might need to exercise the right to self-defense.

These same restrictions apply to carrying *unloaded* firearms openly, except for long-guns that either remain in a vehicle or are properly "encased"[2] when outside the vehicle. Cal. Penal Code §§ 26350, 26400, 26405(c). And, regardless of whether the firearm is loaded, California law prohibits the possession of a concealed firearm in any place outside one's residence, place of business, or other private property, including within a vehicle. *Id.* §§ 25400, 25605. While these broad prohibitions are subject to various exceptions, most exceptions apply only to narrow groups of people, like current and former peace officers (*id.* § 25900), individuals at target ranges or shooting clubs (*id.* § 26005), armored vehicle guards (*id.* § 26005), animal control officers and zookeepers (*id.* § 26025(b)), hunters (*id.* § 26040), and individuals making lawful arrests (*id.* § 26050).[3] These exceptions do little, if anything, for ordinary, law-abiding members of the public who wish to carry firearms for self-defense.

Instead, the only avenue through which the typical law-abiding Californian may lawfully carry a firearm for self-defense is by obtaining a "Carry License,"

[2] "[A] firearm is 'encased' when that firearm is enclosed in a case that is expressly made for the purpose of containing a firearm and that is completely zipped, snapped, buckled, tied, or otherwise fastened with no part of that firearm exposed." Cal. Penal Code § 16505.

[3] The concealed carry ban includes many of the same narrow and inapplicable exemptions as the open carry ban. *See, e.g.*, *id.* §§ 25510-25595.

which allows the licensee to carry a loaded handgun in public, subject to some restrictions. *Id.* §§ 26150-26155.[4] But for residents of Los Angeles, that avenue is closed off as well. California authorizes city police chiefs and county sheriffs ("Issuing Authorities") to issue Carry Licenses to qualifying residents. In counties with populations over 200,000, Issuing Authorities are prohibited from issuing licenses to carry handguns openly, but they may issue license to carry a concealed handgun. *Id.* §§ 26150 (b)(2), 26155 (b)(2). To obtain a Carry License, the applicant must meet a host of eligibility requirements that are not challenged here, including passing a criminal background check and successfully completing a training course covering handgun safety and California firearms laws. *Id.* §§ 26165, 26185. The applicant must also convince the Issuing Authority that the applicant is of "good moral character" (a requirement not challenged here) and has "good cause" to carry a loaded handgun in public. *Id.* §§ 26150(a)(1)–(2), 26155(a)(1)–(2).

Rather than defining "good cause," the State has delegated that task to each Issuing Authority. *Id.* § 26160. Issuing Authorities exercise "unfettered discretion" in deciding whether an applicant has "good cause" to be issued a Carry License. *See Erdelyi v. O'Brien*, 680 F.2d 61, 62 (9th Cir. 1982); *Nichols v. County of Santa Clara*, 223 Cal. App. 3d 1236, 1243 (1990); *CBS, Inc. v. Block*, 42 Cal. 3d 646, 665-66, 725

[4] Carry License holders still may not carry a firearm into schools, sterile areas of public transit facilities, certain California government buildings, and gun shows. Cal. Penal Code §§ 171b, 171.7(b)(1), 626.9, 27330. Appellants do not challenge any of those restrictions here.

P.2d 470 (1986) (Mosk, J., dissenting). Some Issuing Authorities deny Carry Licenses to virtually all applicants, while others issue to any law-abiding, competent, otherwise-qualified adult applicant who seeks a Carry License for self-defense. *See Peruta v. County of San Diego*, 742 F.3d 1144, 1169 (9th Cir. 2014) (*Peruta II*), *vacated*, 824 F.3d 919 (9th Cir. 2016) (en banc) (*Peruta III*). Los Angeles County falls into the former camp: Respondent Sheriff James McDonnell, the sole Issuing Authority for Appellants, requires the applicant to demonstrate a particularized need to carry a handgun in public beyond the general desire of a law-abiding resident to exercise the constitutional right to be armed and ready in case of a confrontation requiring self-defense.

To satisfy Sheriff McDonnell's "good cause" standard, an applicant must provide:

> convincing evidence of a clear and present danger to life, or of great bodily harm to the applicant, his spouse, or dependent child, which cannot be adequately dealt with by existing law enforcement resources, and which danger cannot be reasonably avoided by alternative measures, and which danger would be significantly mitigated by the applicant's carrying of a concealed firearm.

E.R.VII 1374. Under this restrictive conception of "good cause," which requires a law enforcement officer to find that law enforcement resources are inadequate, it is virtually impossible for the ordinary, law-abiding citizen in Sheriff McDonnell's jurisdiction to obtain a Carry License. Instead, such individuals may possess a firearm in a "public place" only for the purpose of transporting it to a vehicle or an authorized location and, even then, the firearm must be unloaded

and stored in a locked container (if a handgun) or properly "encased" (if a long-gun), and "the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances." Cal. Penal Code §§ 25505, 26405(c).[5]

Carrying a firearm in public without a Carry License or without meeting one of the other limited exceptions to California's carry restrictions is punishable as a misdemeanor or a felony, depending on the circumstances. *Id.* §§ 25400, 25850, 26350, 26400. California provides one—and only one—affirmative defense to these prohibitions: An individual in violation must prove that he had a reasonable belief that he or someone else was in "immediate, grave danger" of being attacked. *Id.* § 26045 (a). But this defense is extremely narrow, as the law defines "immediate" to mean only "the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance." *Id.* § 26045(c). Further, it is available only to those found carrying a weapon openly. *Id.* § 26045(a). Citizens carrying concealed firearms may not avail themselves of the defense. *Id.* And as a practical matter, the defense is illusory because California law generally prevents an individual from being in lawful possession of a firearm should "immediate, grave danger" arise. In fact, it is unclear whether it provides any protection at all from a criminal charge for having illegally possessed a firearm before the "immediate,

[5] What locations are "authorized" is not expressly explained in the California Code, but it appears to refer exclusively to those locations listed in Penal Code sections 25510-26405.

grave danger" arising, even if the person otherwise complied with Penal Code section 26045.

Thus, California law effectively allows counties to impose a complete prohibition on the public carrying of handguns for self-defense, which the County of Los Angeles has done, at least for Appellants.

B. The Challenged Provisions Bar Appellants from Carrying a Firearm in Public for Self-defense

Michelle Flanagan has experienced first-hand the effect of California's restrictive carry regime. Flanagan is a responsible gun owner who is qualified to possess firearms under both federal and California law and has not been found to pose any threat to public safety. E.R.VI 1338; E.R.VII 1476. She is licensed to carry a firearm in 35 states and maintained a California Carry License in her former county of residence before moving to Los Angeles County. E.R.VI 1340; E.R.VII 1476. As a real estate agent, Flanagan enters vacant industrial buildings alone, where she often encounters vagrant men who are typically much larger than she is. E.R.VI 1341; E.R.VII 1476. Flanagan fears that, if attacked, she would be unable to protect herself. E.R.VI 1341; E.R.VII 1477. For her own safety and peace of mind, she sought permission to carry her firearm with her on the job. E.R.VI 1341; E.R.VII 1476.

Unfortunately for Flanagan, Sheriff James McDonnell is the sole Issuing Authority for individuals residing in her portion of Los Angeles County. Cal. Penal Code § 26150. Because the county has a population well exceeding 200,000 people,

E.R.VII 1350. 1355-56, an open carry license is not an option. Neither is a concealed license. For Flanagan cannot demonstrate that she faces "a clear and present danger to life, or of great bodily harm." E.R.VII 1374. Indeed, although Flanagan is, in all other respects, legally qualified to carry a firearm, Sheriff McDonnell denied her Carry License application, concluding that her desire to carry a firearm to be armed and ready to exercise the right to self-defense arise did not satisfy his exceptionally narrow "good cause" standard. E.R.VI 1341; E.R.VII 1476, 1479.

Flanagan's fellow appellants and countless members of California Rifle & Pistol Association are law-abiding Los Angeles County residents who likewise have been denied Carry Licenses by Sheriff McDonnell or refrained from applying for them, knowing that they could not satisfy McDonnell's strict "good cause" standard. E.R.VI 1338, 1341-43; E.R.VII 1456, 1460, 1463, 1466, 1469, 1472. These Californians thus cannot lawfully carry firearms in public for self-defense, as they have been denied concealed carry licenses and have no legal means to obtain open carry licenses. But for California's comprehensive restrictions on the public carrying of firearms and their inability to obtain Carry Licenses, the individual appellants, as well as similarly situated CRPA members, would carry firearms in non-sensitive public places for self-defense. E.R.VI 1339, 1344; E.R.VII 1457, 1461, 1467, 1477. Instead, they refrain from doing so for fear of criminal liability. E.R.VI 1339; E.R.VII 1457, 1461, 1467, 1477.

II. PROCEDURAL HISTORY AND THE ORDERS ON APPEAL

In August 2016, Appellants filed this lawsuit seeking declaratory and injunctive relief under the Second Amendment from the California statutes regulating the public carry of firearms, as well as from Sheriff McDonnell's narrow "good cause" policy for issuance of concealed Carry Licenses. E.R.X 2218. The State moved to dismiss their Second Amendment claim to the extent that it sought relief from any of California's concealed carry restrictions. E.R.I 37-40; E.R.X 2220. Sheriff McDonnell moved to dismiss their claims in their entirety. E.R.X 2220. After full briefing and a hearing, the district court granted both motions, dismissing all claims against Sheriff McDonnell without prejudice, and dismissing the Second Amendment claim against the State in part. E.R.X 41.

The district court determined that this Court's decision in *Peruta*, which held that the Second Amendment does not protect the right to carry a *concealed* firearm, 824 F.3d at 942, foreclosed Appellants' challenge to California's concealed carry laws. E.R.I 37-39. Concluding that Sheriff McDonnell could provide relief only from *concealed* carry restrictions (because state law prohibits open carry in counties as large as Los Angeles), the court held that Appellants had no viable Second Amendment claim against him. E.R.I 38-39. The district court also dismissed the Second Amendment claim against the State to the extent that it challenged any concealed carry restrictions, but it allowed the Second Amendment claim against California's open carry restrictions to proceed. E.R.I 37-39.[6] The parties then filed

[6] Appellants also argued before the district court that these restrictions violate the Equal Protection Clause, E.R.X 2189-94, because they authorize

cross motions for summary judgment on the remainder of the Second Amendment claim.

The court tentatively granted summary judgment to the State, but asked the parties to submit supplemental briefing addressing whether summary judgment is proper when, as here, the respective parties' expert witnesses disagree on the efficacy of a challenged law. E.R.II 68; E.R.X 2224. Ultimately, the court affirmed its tentative ruling, granting summary judgment in favor of the State. E.R.I 14.[7] In its order, the court held that under the Ninth Circuit's test for evaluating Second Amendment challenges, California's open carry scheme is subject only to intermediate for two reasons. First, the court held that the "core" Second Amendment right is confined to the home. E.R.I 9. Second, the court held that prohibiting Appellants from carrying firearms for self-defense does not severely burden the exercise of their Second Amendment rights. For the challenged laws do not "place limitations on the ability of an individual to protect himself or herself within his or her home," and they include "various exceptions that permit the carrying of a loaded firearm in public for certain purposes." E.R.I 9-10.

The court went on to uphold the challenged laws under intermediate scrutiny. E.R.I 10-14. It first held that the State's objectives—public safety,

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some individuals to exercise the right to bear arms beyond the home, while denying that fundamental right to others—with no valid basis for the distinction. *See City of Cleburne, Tex., v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). The district court rejected that challenge as well. E.R.I 39-40.

[7] The district court also ruled on the parties' evidentiary objections. E.R.I 15-33; E.R.II 58-66.

reducing violent crime, conserving law enforcement resources, and reducing the likelihood of dangerous law enforcement confrontations—are important. E.R.I 10-11. The court went on to find that there is a "reasonable fit" between the State's chosen means—prohibiting law-abiding individuals from carrying firearms for self-defense—and its important objectives. E.R.I 12-14. In reaching that conclusion, the court maintained that " 'substantial deference to the predictive judgments of [the legislature]' is warranted." E.R.I 12 (quoting *Kachalsky v. County of Westchester*, 701 F.3d 81, 97 (2nd Cir. 2012)). It then found the State's evidence sufficient to "show[] that [California] reasonably could have inferred that there was a relationship between prohibiting individuals from carrying firearms openly in public and promoting and achieving the important government objective of public safety." E.R.I 12. As for Appellants' competing evidence, the court held that it was "not sufficient to warrant a different conclusion" because the issue is whether California had "sufficient evidence to support the inference" that the law would achieve its aim, not "whether different experts could reasonably disagree." E.R.I 13.

SUMMARY OF ARGUMENT

California's restrictive carry regime cannot be reconciled with the Second Amendment. That conclusion follows inexorably from both first principles and this Court's recent decision in *Young* striking down a Hawaii regime that likewise foreclosed ordinary, law-abiding citizens from carrying firearms for self-defense. As *Young* correctly concluded, the text, history, and purpose of the Second

Amendment confirm that "the right to bear arms must guarantee *some* right to self-defense in public," *Young*, 896 F.3d at 1068, and that this right is at the very core of the Second Amendment. Any law that denies that right to ordinary, law-abiding citizens is therefore by definition unconstitutional, as the enshrinement of rights in the Constitution necessarily forecloses laws that flatly prohibit their exercise.

That is precisely what California's restrictive carry regime does. Except for in certain remote and isolated areas, California completely bars most of its citizens from carrying a firearm outside the home without a license to do so. California also prohibits counties as large as Los Angeles from issuing licenses to carry a firearm openly. While California *does* allow Los Angeles and other large counties to issue licences to carry concealed, it also gives the Sheriff unfettered discretion to decide whether an applicant has shown "good cause" to obtain such a license. Appellants applied for concealed Carry Licenses, but Sheriff McDonnell denied their applications, concluding that desire to carry firearms for self-defense does not satisfy his exceedingly narrow definition of "good cause." As a result, Appellants have no avenue through which they may carry firearms outside their homes "for the core lawful purpose of self-defense." *Heller*, 554 U.S. at 630.

Because California's restrictive carry regime leaves Appellants with no avenue to exercise that core Second Amendment right, it is unconstitutional. Just as in *Young*, that conclusion follows under any standard of scrutiny, as the regime effectuates a destruction of a core constitutional right. But applying either strict or intermediate scrutiny (the only two options available under binding Supreme

Court precedent, *Heller*, 554 U.S. at 628 n.27) yields the same result. For a law that leaves *no* means to exercise a core constitutional is not remotely—let alone narrowly or reasonably—tailored to accomplish a state objective no matter how legitimate or even compelling that objective may be. The district court held otherwise only by making the same mistakes this Court just corrected in *Young*, severely discounting the protection that the Constitution affords and the burden that the State bears in justifying such a restrictive regime. In short, given the Framers' decision to protect the right of the "the people" to keep and bear arms, U.S. Const., amend. II, a "law-abiding citizen's right to bear common arms must enable the typical citizen to carry a gun." *Wrenn*, 864 F.3d at 668.

To be clear, the relief Appellants seek is narrow. They do not challenge California's many restrictions on the purchase, sale, and possession of firearms. They do not seek to carry in sensitive places, like government buildings. They do not desire to carry dangerous or unusual weapons. Nor do they seek to dictate whether the State accommodates their constitutional rights through open carry or concealed carry. Instead, they seek only to carry handguns, the "quintessential self-defense weapon," *Heller*, 554 U.S. at 629, *in some manner*, *either* concealed *or* openly, as countless Californians in counties with less restrictive "good cause" regimes have a right to do. The State and Sheriff McDonnell may accommodate the right to carry in different ways, but accommodate it they must. Denying all manner of carry to ordinary, law-abiding citizens, as they currently do, is one policy choice the Constitution takes "off the table." *Id.* at 636.

STANDARD OF REVIEW

This Court "review[s] de novo the district court's grant of summary judgment . . . . [T]he evidence of the nonmovant[s] is to be believed, and all justifiable inferences are to be drawn in [their] favor." *Moldex-Metric, Inc. v. McKeon Products, Inc.*, 891 F.3d 878, 881 (9th Cir. 2018) (internal quotation marks omitted). Whether the State's restrictions on carrying firearms in public are constitutional under the Second Amendment is a legal question that this Court must decide de novo. *See Wrenn v. D.C.*, 864 F.3d 650, 656 (D.C. Cir. 2017).

The same standards apply to the district court's dismissal of the Second Amendment claims against Sheriff McDonnell's concealed carry restrictions. *Cook, Perkiss & Liehe, Inc. v. N. Cal. Coll. Serv. Inc.*, 911 F.2d 242, 244 (9th Cir. 1990) (citing *Guillory v. Cnty. of Orange*, 731 F.2d 1379, 1381 (9th Cir. 1984)). This Court must reverse that dismissal unless " 'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegation.' " *Id.* (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)).

ARGUMENT

The Second Amendment provides that "the right of the people to keep and bear Arms . . . shall not be infringed." For decades, there was disagreement among lower courts over whether those words protect only a collective rather than individual right. *Compare, e.g.*, *Silveira v. Lockyer*, 312 F.3d 1052, 1060-61 (9th Cir. 2002), *with Silveira v. Lockyer*, 328 F.3d 567, 568-70 (9th Cir. 2003) (Kozinski, J., dissenting from denial of rehearing en banc); *id.* at 570-71 (Kleinfeld, J., dissenting

from denial of rehearing en banc). The Supreme Court resolved that uncertainty in *Heller*, concluding after an exhaustive textual and historical analysis that the Second Amendment protects an "individual right to possess and carry weapons" for self-defense. 554 U.S. at 592. The Court then held that the law before it, a District of Columbia ordinance banning the possession of operable handguns in the home, violated the Second Amendment under "any of the standards of scrutiny that we have applied to enumerated constitutional rights"—that is, any standard of scrutiny more demanding than rational basis review. *Id.* at 628 & n.27.

In *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Supreme Court held that the "right to keep and bear arms for the purpose of self-defense" recognized in *Heller* is "fully applicable to the States" because it is "among those fundamental rights necessary to our system of ordered liberty," *id.* at 750, 778; *see also id.* at 806 (Thomas, J., concurring). The Court thus explained that states and municipalities must protect the individual right protected by the Second Amendment and may not simply "enact any gun control law that they deem to be reasonable." *Id.* at 783 (plurality opinion); *see also Caetano v. Massachusetts*, 136 S. Ct. 1027 (vacating state court decision on Second Amendment grounds).

In the years since *Heller* and *McDonald*, the Ninth Circuit has developed a two-step framework for adjudicating Second Amendment claims. First, a court "asks if the challenged law burdens conduct protected by the Second Amendment, based on a historical understanding of the scope of the right." *Silvester v. Harris*, 843 F.3d 816, 821 (9th Cir. 2016) (citing *Heller*, 554 U.S. at 625). If so, the court

analyzes the law under heightened scrutiny, with the degree of scrutiny varying depending on "how close the challenged law comes to the core of the Second Amendment right, and . . . the severity of the law's burden on that right." *Id.* (citing *Jackson v. City & County of San Francisco*, 746 F.3d 953, 960-61 (9th Cir. 2014)). "A law that implicates the core of the Second Amendment right and severely burdens that right warrants strict scrutiny . . . . If a challenged law does not implicate a core Second Amendment right, or does not place a substantial burden on the Second Amendment right, the court may apply intermediate scrutiny." *Id.* (internal citations, quotations, and brackets omitted).

Courts need not determine the level of scrutiny, however, if, as in *Heller*, the law being challenged "amounts to a destruction of the Second Amendment right," as such a law "is unconstitutional under any level of scrutiny." *Jackson*, 746 F.3d at 961. After all, "[t]he very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is *really worth* insisting upon." *Heller*, 554 U.S. at 634. As the Supreme Court has admonished, the Second Amendment is not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *McDonald*, 561 U.S. at 780 (plurality opinion). In short, it is "a real constitutional right. It's here to stay." *Fisher v. Kealoha*, 855 F.3d 1067, 1072 (9th Cir. 2017) (Kozinski, J., separate opinion).

I. THE SECOND AMENDMENT PROTECTS THE RIGHT TO CARRY FIREARMS OUTSIDE THE HOME

California law generally bars law-abiding adult citizens like Flanagan from carrying a handgun outside the home for self-defense. The critical question in determining whether that prohibition "burdens conduct protected by the Second Amendment" is thus whether the Second Amendment right to self-defense extends beyond the four walls of one's home. *Silvester*, 843 F.3d at 821. As this Court recently concluded in *Young v. Hawaii*, 896 F.3d 1044 (9th Cir. 2018), the text, structure, purpose, and history of the Second Amendment all confirm that it does.

A. The Text, Structure, and Purpose of the Second Amendment Confirm that the Right to Bear Arms Extends Beyond the Home.

Any inquiry into the scope of the Second Amendment must begin with its text. *See Heller*, 554 U.S. at 576. That text provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. As the Supreme Court held in *Heller*, the text protects two separate rights: the right to "keep" arms, and the right to "bear" them. *See Heller*, 554 U.S. at 591 ("keep and bear arms" is *not* a "term of art" with a "unitary meaning"). Under *Heller*'s binding construction, to "keep arms" means to "have weapons." *Id.* at 582. And to "bear arms" means to "carry" weapons for "confrontation"—to " 'wear, bear, or carry'" firearms "'upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another

person.'" *Id.* at 584 (quoting *Muscarello v. United States*, 524 U.S. 125, 143 (1998) (Ginsburg, J., dissenting)).

As *Young* thus correctly concluded, "carrying firearms outside the home fits comfortably within *Heller*'s definition of 'bear.' " *Young*, 896 F.3d at 1052. If, according to *Heller*, "bear arms" means to carry weapons so that one might be prepared for potential violent confrontation, and "[t]he prospect of confrontation is … not limited to one's dwelling," the term is most naturally read to encompass the carrying of a weapon beyond the walls of one's residence. *Id.*. To say otherwise—to confine the right to the home—would be irreconcilable with the right's "*central component*": individual self-defense. *Id.* at 1069 (citing *Heller*, 554 U.S. at 599); *see Wrenn*, 864 F.3d at 657 ("After all, the Amendment's core lawful purpose is self-defense, and the need for that might arise beyond as well as within the home."); *Moore v. Madigan*, 702 F.3d 933, 936 (7th Cir. 2012) ("[T]he interest in self-protection is as great outside as inside the home."); *accord Heller*, 554 U.S. at 679 (Stevens, J., dissenting) ("[T]he need to defend oneself may suddenly arise in a host of locations outside the home.").

Young and the cases on which it relied thus were merely stating the obvious: The threat of violence is not exclusively a domestic concern. If anything, the need to carry a firearm for self-defense is *more likely* to arise outside the home than within. Even if one's home is not literally a castle, it provides a measure of protection that a person lacks when walking through a dangerous neighborhood or traveling on a deserted street. In America's early days, for example, "[o]ne

would need from time to time to leave one's home to obtain supplies from the nearest trading post, and en route one would be as much (probably more) at risk if unarmed as one would be in one's home unarmed." *Moore*, 702 F.3d at 936. The "right to keep and bear arms for personal self-defense in the eighteenth century" therefore "could not rationally have been limited to the home." *Id.*

The same is true today. Statistics show that a greater percentage of violent crimes "occur on the street or in a parking lot or garage" than "in the victim's home." *Grace v. District of Columbia*, 187 F. Supp. 3d 124, 135 (D.D.C. 2016). Likewise, a substantial majority of rapes, armed robberies, and other serious assaults occur outside the home. *See* Michael P. O'Shea, *Modeling the Second Amendment Right to Carry Arms (I): Judicial Tradition and the Scope of "Bearing Arms" for Self-Defense*, 61 Am. U. L. Rev. 585, 610-11 (2012) (citing Bureau of Justice Statistics, U.S. Dep't of Justice, *Criminal Victimization in the United States, 2007 Statistical Tables* tbl.62 (2010), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/ cvus07.pdf). As the Seventh Circuit explained, "a Chicagoan is a good deal more likely to be attacked on a sidewalk in a rough neighborhood than in his apartment on the 35th floor of the Park Tower." *Moore*, 702 F.3d at 937. Likewise, a "woman who is being stalked or has obtained a protective order against a violent ex-husband is more vulnerable to being attacked while walking to or from her home than when inside." *Id.* "To confine the right to be armed to the home is [thus] to divorce the Second Amendment from the right of self-defense described in *Heller* and *McDonald*." *Id.*

What is more, confining the right to bear arms to within the home simply does not make sense. "To speak of 'bearing' arms within one's home would at all times have been an awkward usage." *Moore*, 702 F.3d at 936; *see Grace*, 187 F. Supp. at 135, *vacated on other grounds*, *Wrenn v. District of Columbia*, 864 F.3d 650, 663-64 (D.C. Cir. 2017) ("[R]eading the Second Amendment right to 'bear' arms as applying only in the home is forced or awkward at best, and more likely is counter-textual."). It is far "more natural to view the Amendment's core as including a law-abiding citizen's right to carry common firearms for self-defense beyond the home." *Wrenn*, 864 F.3d at 657. After all, "the idea of carrying a gun 'in the clothing or in a pocket, for the purpose . . . of being armed and ready,' does not exactly conjure up images of father stuffing a six-shooter in his pajama's pocket before heading downstairs to start the morning's coffee, or mother concealing a handgun in her coat before stepping outside to retrieve the mail." *Peruta II*, 742 F.3d at 1152. To the contrary, bearing arms "brings to mind scenes such as a woman toting a small handgun in her purse as she walks through a dangerous neighborhood, or a night-shift worker carrying a handgun in his coat as he travels to and from his job site"—much like what Flanagan and others seek to do here. *Id.*

Finally, confining the right to "bear arms" to the home not only would be nonsensical, but would render the right largely duplicative of the separately protected right to "keep" arms. That would contradict the basic principle that no "clause in the constitution is intended to be without effect." *Marbury v. Madison*, 5

U.S. (1 Cranch) 137, 174, 2 L. Ed. 60 (1803). "The addition of a separate right to 'bear' arms, beyond keeping them, should therefore protect something more than mere carrying incidental to keeping arms." *Young*, 896 F.3d at 1052-53, *citing* Thomas M. Cooley, The General Principles of Constitutional Law in the United States of America 271 (1880) ("[T]o bear arms implies something more than mere keeping."). "Understanding 'bear' to protect at least some level of carrying in anticipation of conflict outside of the home provides the necessary gap between 'keep' and 'bear' to avoid rendering the latter guarantee as mere surplusage." *Id.* In short, as this Court concluded in *Young*, and not one circuit has disputed, the most natural reading of the right to bear arms includes public carry.

The very structure of the Second Amendment reinforces that conclusion. As *Heller* explained, the Second Amendment's prefatory clause—"[a] well regulated Militia, being necessary to the security of a free State"—performs a "clarifying function" for the meaning of the operative clause. 554 U.S. at 577-78. Here, the prefatory clause's reference to "the Militia" clarifies that the operative clause's protection of the right to "bear Arms" encompasses a right that extends beyond the home. Militia service, of course, necessarily includes bearing arms in public. The Revolutionary War was not won with muskets left at home; nor were the Minutemen notorious for their need to return home before being ready for action. And all the Justices in *Heller* agreed that the right to bear arms was codified at least in part to ensure the viability of the militia. *See id.* at 599; *id.* at 637 (Stevens,

J., dissenting). The Court thus *unanimously* agreed that one critical aspect of the right to bear arms extends beyond the home.

B. The History of the Second Amendment Confirms that the Right to Bear Arms Extends Beyond the Home.

The "historical background" of the Second Amendment "strongly confirm[s]" that the right to bear arms extends beyond the home. *Heller*, 554 U.S. at 592; *see Silvester*, 843 F.3d at 820 ("determining the scope of the Second Amendment's protections requires a textual and historical analysis"). Undoubtedly, "the important founding-era treatises, the probative nineteenth century case law, and the post-civil war legislative scene each reveal a single American voice. The right to bear arms must include, *at the least*, the right to carry a firearm openly for self-defense." *Young*, 896 F.3d at 1061; *see also Wrenn*, 864 F.3d at 658 (explaining that many of the "same sources" *Heller* consulted in determining that the Second Amendment protects an individual right to keep arms also "attest that the Second Amendment squarely covers carrying beyond the home for self-defense").

1. Founding-era Treatises

As *Young* explains, legal treatises from the founding era support the view that the right to bear arms protects public carry, including an early American edition of Blackstone's *Commentaries on the Laws of England*, which *Heller* calls the "most important" edition and *McDonald* treated as "heavily instructive in interpreting the Second Amendment." *Young*, 896 F.3d at 1053-54 (citing *Heller*,

554 U.S. at 594; *McDonald*, 561 U.S. at 769). In it, author and law professor St. George Tucker explained that " '[i]n many parts of the United States, a man no more thinks, of going out of his house on any occasion, without his rifle or musket in his hand, than a European fine gentleman without his sword by his side.' " *Young*, 896 F.3d at 1054 (quoting 5 George Tucker, *Blackstone's Commentaries*, app., n.B, at 19 (1803). As the historical record reveals, "it is unquestionable that the public carrying of firearms was widespread during the Colonial and Founding Eras." *Grace*, 187 F. Supp. 3d at 136.

Accounts from prominent figures of the time confirm Tucker's observation about the ubiquity of publicly borne arms. Many Founding Fathers, including George Washington, Thomas Jefferson, and John Adams, carried firearms in public and spoke in favor of the right to do so. *Id.* at 136-37. In many parts of early America, "carrying arms publicly was not only permitted—it was often *required*." *Id.* at 136; *see also* Nicholas J. Johnson, et al., *Firearms Law and the Second Amendment* 106 (2012) ("[A]bout half the colonies had laws requiring arms-carrying in certain circumstances."). In fact, early Americans considered the right to armed self-defense the "true palladium of liberty." *Young*, 896 F.3d at 1053 (quoting 1 George Tucker, *Blackstone's Commentaries*, app., n.D, at 300 (1803)). All of these facts strongly suggest that the right to bear arms was not limited to the home.

The British authorities largely shared those views. *See Young*, 896 F.3d at 1054. Blackstone described " 'the right of having and using arms for self-

preservation and defence' " as " 'one of the fundamental rights of Englishmen.' " *Heller*, 554 U.S. at 594 (quoting 1 Blackstone 136, 139-40 (1765)). The fundamental right to use arms for "self-preservation and defense" necessarily includes the right to carry firearms outside the home because the need for self-defense often arises outside the home. English authorities assumed this obvious fact, as is apparent in renowned barrister William Hawkins's observation that "the killing of a Wrong-doer . . . may be justified . . . where a Man kills one who assaults him *in the Highway* to rob or murder him." 1 William Hawkins, *A Treatise of the Pleas of the Crown* 71 (1762) (emphasis added); *see also* 1 Matthew Hale, *Historia Pacitorum Coronae* 481 (Sollum Emlyn ed. 1736) ("If a thief assault a true man *either abroad* or in his house to rob or kill him, the true man . . . may kill the assailant, and it is not felony.") (emphasis added). Indeed, "it followed from Blackstone's premise that such a right, the predecessor to our Second Amendment, 'was by the time of the founding understood to be an individual right protecting against both *public* and private violence.' " *Young*, 896 F.3d at 1054 (quoting *Heller*, 554 U.S. at 594 (emphasis added)).

2. Nineteenth Century Case Law

Early American judicial authorities, including many *Heller* relied on, likewise make clear that the Second Amendment was understood to include the right to bear arms in public in some manner. Many of these nineteenth century cases are analyzed in comprehensive detail by this Court in *Young*, 896 F.3d 1055-57, which discussed, among others, *Bliss v. Commonwealth*, 12 Ky. 90 (1822), *Simpson v. State*,

13 Tenn. 356 (1833), *State v. Reid*, 1 Ala. 612 (1840), *Nunn v. State*, 1 Ga. 243 (1846), and *State v. Chandler*, 5 La. Ann. 489 (1850). As *Young* explains, these authorities "persuasively" reveal "that the Second Amendment must encompass a right to carry a firearm openly outside the home." *Id.* at 1054; *see also* O'Shea, *supra*, at 590 ("American courts applying the individual right to bear arms for the purpose of self-defense have held with near-uniformity that this right includes the carrying of handguns and other common defensive weapons outside the home.").

The critical point, reiterated in each of these cases, is that "the right to bear arms must guarantee *some* right to self-defense in public." *Young*, 896 F.3d at 1068. The Georgia Supreme Court's decision in *Nunn v. State*, 1 Ga. 243 (1846), lauded for its analysis by *Heller*, 554 U.S. at 612, is illustrative. There, the court held a state statute "valid" so far as it "seeks to suppress the practice of carrying certain weapons *secretly*," because banning concealed carry alone would not "deprive the citizen of his *natural* right of self-defence, or of his constitutional right to keep and bear arms." 1 Ga. at 251. But to the extent the law "contains a prohibition against bearing arms *openly*," the court explained, it "is in conflict with the Constitution, and *void*." *Id.* Many other cases relied on by *Heller* followed the same approach. 554 U.S. at 613, 629 (citing *Andrews v. State*, 50 Tenn. 165, 187 (1871); *State v. Chandler*, 5 La. Ann. 489 (1850); *State v. Reid*, 1 Ala. 612 (1840)). The few cases that reached a different result have been "sapped of authority by *Heller* . . . because each of them assumed that the [Second] Amendment was only about militias and not personal self-defense." *Wrenn*, 864 F.3d at 658; *see also Young*, 170 F.3d at 1056.

As *Young* explains, *id.* at 1065-68, neither the ancient Statute of Northampton nor the various Northampton-style and "surety" laws of the nineteenth century undermine that conclusion. British and American courts alike consistently concluded that the Statute of Northampton did not prohibit carrying firearms, but only "punish[ed] people who go armed *to terrify the King's subjects*." *Sir John Knight's Case*, 87 Eng. Rep. 75, 76, 3 Mod. 117 (K.B. 1686) (emphasis added); see also *State v. Huntly*, 25 N.C. 418, 422-23 (1843) (concluding that "the carrying of a gun *per se* constitutes no offence" under a Northampton-style law; instead carrying was prohibited only with "the wicked purpose" "to terrify and alarm, and in such manner as naturally will terrify and alarm, a peaceful people"). And early "surety" laws did not confine the right to carry to those with "reasonable cause" to do so, but instead imposed a requirement to pay a surety "only upon a well-founded complaint that the carrier threatened 'injury or a breach of the peace.' " *Young*, 170 F.3d at 1061-62. Surety laws thus provided a mechanism for curtailing the *abuse* of the right to bear arms, not its exercise. In sum, under *Heller*, "history matters, and here it favors the [Appellants]." *Wrenn*, 864 F.3d at 658.

C. Precedent Confirms that the Right to Bear Arms Extends Beyond the Home.

Decisions from other courts reinforce *Young*'s conclusion that "the right to bear arms must guarantee *some* right to self-defense in public." *Young*, 896 F.3d at 1068. Several courts of appeals have analyzed the scope of the Second Amendment and concluded that it extends beyond the home. *See, e.g.*, *Wrenn*, 864

F.3d at 657-64; *Moore*, 702 F.3d at 935-36. Even appellate courts that upheld strict carry restrictions did not hold that the Second Amendment *does not even apply* to those restrictions. Instead, they (wrongly) determined those restrictions survived heightened scrutiny. The Second Circuit, for example, despite upholding a New York carry restriction, concluded that the Second "Amendment must have ***some*** application in the . . . context of the public possession of firearms." *Kachalsky v. County of Westchester*, 701 F.3d 81, 89 (2d Cir. 2012).

That consensus should come as little surprise, as *Heller* itself strongly suggests that the Second Amendment applies outside the home. For instance, when the Court searched in vain for historical restrictions as severe as the District's handgun ban, it considered restrictions on carrying firearms *outside* the home most analogous and noted with approval that "some of those [restrictions] have been struck down." *Heller*, 554 U.S. at 629 (citing *Nunn*, 1 Ga. at 251 (striking down prohibition on carrying pistols openly) & *Andrews*, 50 Tenn. at 187 (same)). Such laws could hardly represent "severe" restrictions on the right to keep and bear arms for self-defense, *id.*, if the Second Amendment's protection were limited to the home. Further, when the *Heller* Court identified certain "presumptively lawful" regulatory measures, it included "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings." *Id.* at 626-27 & n.26. As this Court observed in *Young*, the *Heller* Court need not have singled out those public places as sites of permissible restrictions if there was no right to carry outside the home at all. *See Young*, 896 F.3d at 1053.

To be sure, *Heller* did observe that "the need for defense of self, family, and property is most acute" in "the home." 554 U.S. at 628. But the Court did so only in the section of its opinion devoted to applying the constitutional principles it recognized to the specific restriction at hand—a ban on possession *in the home*. *Id.* at 628-36. By contrast, in the entirety of its 50-page explication of the text and historical understanding of the Second Amendment, the *Heller* Court referred to the "home" or "homestead" a grand total of three times and never once to suggest that the right is confined to the home. *Id.* at 576-626. That hardly compels the conclusion that the Supreme Court somehow intended to recognize "only a narrow individual right to keep an operable handgun at home for self-defense," *Young v. Hawaii*, 911 F. Supp. 2d 972, 989 (D. Haw. 2012), or even that the "core" of the Second Amendment is limited to in-home defense. E.R.I 8-9.

Moreover, that the need for self-defense may be "most acute" in the home certainly "doesn't mean it is not acute"—let alone nonexistent—"outside the home." *Moore*, 702 F.3d at 935; *accord Wrenn*, 864 F.3d at 657. To the contrary, it "impl[ies] that the right exists, perhaps less acutely, outside the home." *Young*, 896 F.3d at 1083, n.5. That is hardly anomalous. Many constitutional rights are particularly important within the home but also extend with full force beyond the home. The privacy protection of the Fourth Amendment, for example, is "at its zenith" in the home, *United States v. Scott*, 450 F.3d 863, 871 (9th Cir. 2006), but undeniably extends beyond the home as well, *see Riley v. California*, __ U.S. __, 134 S. Ct. 2473 (2014); *United States v. Jones*, 565 U.S. 400 (2012). There is no reason

the Second Amendment should be treated any differently. *See McDonald*, 561 U.S. at 780 (plurality opinion) (rejecting notion that Second Amendment is a "second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees"). Indeed, the Supreme Court at least implicitly rejected the suggestion that the Second Amendment is confined to the home when it unanimously vacated an opinion of the Massachusetts Supreme Judicial Court holding the Second Amendment inapplicable to the possession of a stun gun by a woman *in a public parking lot*. *Caetano*, 136 S. Ct. at 1027-28; *see also id.* at 1029 (Alito, J., concurring).

Not surprisingly, then, California has already conceded that the Second Amendment must have "some purchase" outside the home, and that a state may not be able to "categorically" ban carry beyond the home. Oral Arg. Rec. 41:05-50, 44:06–16, *Peruta III* (No. 10-56971). There is widespread agreement among the circuits that the Second Amendment has application beyond the home. And *Young*'s conclusion that the Second Amendment applies outside the home is consistent with *Peruta III*, as *Peruta III* concluded only that the Second Amendment protects no freestanding right to *concealed* carry, expressly reserving the question of "whether the Second Amendment protects *some ability* to carry firearms in public." 824 F.3d at 927 (emphasis added); *see also id.* at 939, 942. Because *Peruta III* left that question unanswered, this Court in *Young* was free to hold affirmatively, as it

correctly did, that "the right to carry a firearm openly for self-defense falls within the core of the Second Amendment." *Young*, 896 F.3d at 1070.[8]

II. CALIFORNIA'S RESTRICTIVE CARRY SCHEME VIOLATES THE SECOND AMENDMENT

Concluding that the right to bear arms extends beyond the home all but resolves this case, as the total denial of a right protected by the Second Amendment "fail[s] constitutional muster" under "any of the standards of scrutiny." *Heller*, 554 U.S. at 628-29. Thus, whether this Court applies the categorical approach that *Heller* demands or applies one of the levels of heightened scrutiny, the result is the same: California's refusal to allow ordinary, law-abiding adults—the very "people" the Second Amendment protects—to bear arms is unconstitutional. The district court's contrary holding results from its erroneous view that only the denial of *in-home* firearm possession can "destruct" the self-defense right, E.R.I 9, and its inappropriate application of what effectively amounted to rational-basis scrutiny. E.R.I 10-14.

A. California's Effective Ban On Carry By Ordinary, Law-Abiding Citizens Is Categorically Invalid.

Because California completely denies ordinary law-abiding residents any outlet to carry outside the home, there is no need to determine the applicable level of scrutiny, as a law that completely denies a constitutionally protected right to

[8] While Appellants accept *Peruta III* as binding precedent on the question it addressed at this stage of the proceedings, they preserve their right to challenge its holding in an appropriate forum. *Cf. Wrenn*, 864 F.3d at 663 n.5 (disagreeing with *Peruta III*).

those entitled to exercise it "fail[s] constitutional muster" under "any of the standards of scrutiny." *Heller*, 554 U.S. at 628-29. That is the approach *Heller* took in striking down a total denial of the ordinary citizen's right to *keep* arms, *id.*, and it is the approach that this Court and others have taken in striking down bans on the right to *bear* arms, *see Young*, 896 F.3d at 1052-53; *Wrenn*, 864 F.3d at 664-66; *Moore*, 702 F.3d at 941-42; *Palmer v. District of Columbia*, 59 F. Supp. 3d 173, 182-83 (2014). It is also an approach that a unanimous Ninth Circuit panel endorsed in *Jackson*, noting that a law that "amounts to a destruction of the Second Amendment right, is unconstitutional under any level of scrutiny." 746 F.3d at 961. Because California generally bars individuals like Flanagan from carrying a firearm outside the home, it " 'amounts to a destruction' of a core right, and as such, it is infirm '[u]nder any of the standards of scrutiny.' " *Young*, 896 F.3d at 1050 (quoting *Heller*, 554 U.S. at 628.

To be sure, California's extremely restrictive carry scheme is subject to some narrow exceptions. But far from being "significant," E.R.I 9, those exceptions do nothing whatsoever to protect the right of ordinary, law-abiding citizens like Flanagan to carry a firearm for self-defense. The exemptions California provides for various narrow categories of individuals are irrelevant, as there is no dispute that neither Flanagan nor the average law-abiding citizen could invoke any of them. "Restrictions challenged under the Second Amendment must be analyzed with regard to their effect on the typical, law-abiding citizen . . . because the Second Amendment protects the right of *individuals* to keep and to

bear arms, not *groups* of individuals." *Young*, 896 F.3d at 1071 (citations and quotations omitted). That peace officers, zookeepers, or other subsets of "the people" whose rights the Second Amendment protects, U.S. Const. amend. II, may be allowed to carry firearms is thus beside the point. For restricting the right "to a small and insulated subset of law-abiding citizens" "violates the core of the Second Amendment." *Id.*

To be sure, the possession ban at issue in *Heller* had "minor exceptions" for some people, such as retired police officers, *see* 554 U.S. at 575 n.1, but that did not stop the Supreme Court from characterizing it as a "complete prohibition" on the right of "the people" to keep arms or from categorically invalidating it, *id.* at 629. That is because the Court correctly recognized that the right to keep and bear arms can no more be limited to such individuals than the right to free speech can be limited to paid newspaper columnists. *See, e.g.*, *First Nat'l. Bank of Boston v. Bellotti*, 435 U.S. 765, 777 (1978) (recognizing that speech protection "does not depend upon the [speaker's] identity"). Because a ban "on the ability of most citizens to exercise an enumerated right would have to flunk any judicial test that was appropriately written and applied," there is no need to apply "any particular balancing test" to conclude that California's restrictive carry regime violates the Second Amendment. *Wrenn*, 864 F.3d at 666.

California's exception for Carry License holders is irrelevant for the same reason. For one thing, California prohibits issuance of *open* carry licenses in counties with a population of more than 200,000. Cal. Penal Code §§ 26150 (b)(2),

26155 (b)(2). So for Appellants and other residents of Los Angeles (and other large counties with similarly restrictive "good cause" regimes), the State has entirely foreclosed the only form of carry that this Court has held the Second Amendment could protect, which itself could suffice to violate the Constitution under this Court's precedent. *See Young*, 896 F.3d 896 F.3d 1044. But even if this Court were to conclude that "a concealed carry regime could provide a sufficient channel for typical, law-abiding citizens to exercise their right to bear arms for self-defense" (an issue that *Young* did not resolve), *id.* at 1071 n.21, California does not protect that channel either.[9]

To be sure, if the State required Issuing Authorities to recognize self-defense as "good cause" to obtain a Carry License, then that exception would provide ordinary-law abiding individuals with an outlet to exercise their right to bear arms. But the State does not. Instead, the State gives Issuing Authorities "unfettered discretion" to decide what qualifies as "good cause," *Nichols v. Cnty. of Santa Clara*, 223 Cal. App. 3d 1236, 1243 (1990), thus leaving the Sheriff free to adopt a definition that ordinary, law-abiding Los Angeles residents cannot satisfy.

[9] To be clear, Appellants would be satisfied with a remedy that compels the State or the Sheriff to give Appellants and other otherwise-qualified citizens Carry Licenses, but leaves the State or the Sheriff free to choose between open or concealed carry. *See, e.g.*, *Moore*, 702 F.3d at 942. Appellants have challenged California's open carry laws, its concealed carry laws, and the Sheriff's good cause policy not because they insist that every one of these provisions must be invalidated, but to ensure that there is no confusion about the scope of their constitutional challenge, and that the courts have available to them every possible avenue for remedying the injury Appellants have suffered.

That is precisely what the Sheriff has done. There is no dispute that the individual appellants were each denied concealed Carry Licenses because their desire to carry a handgun for self-defense does not satisfy the Sheriff's good cause policy—a policy that requires the applicant to *differentiate* herself from the ordinary, law-abiding citizen and requires a law-enforcement officer to certify that law enforcement resources are inadequate to protect the applicant. So the Carry License exception is no exception at all for Appellants or for all similarly situated ordinary, law-abiding Californians. And neither the district court nor defendants ever suggested that Appellants could actually obtain a Carry License.

The only "exception" the district court expressly identified in its analysis is California's narrow affirmative defense to criminal prosecution for an individual who carries a firearm in the face of "immediate, grave danger." E.R.I 9-10. But the court did not explain how that defense provides a meaningful dispensation from California's otherwise-comprehensive carry prohibitions. That is because it does not. The defense not only is limited to occasions of "grave danger," but applies *only* during "the brief interval" between when law enforcement officials are notified of the "grave danger" and when they arrive on scene. Cal. Penal Code §§ 26045(a)–(c). Because an individual is prohibited from having even an *unloaded* firearm on or near his person in public to load should "immediate, grave danger" arise, *see id.* §§ 26350 (prohibiting open carry of unloaded firearms) and 25400 (prohibiting concealed carry of firearms, even if unloaded), "where the fleeing victim would obtain a gun during that interval is apparently left to Providence."

Peruta II, 742 F.3d at 1147, n.1. If a Californian cannot lawfully possess a firearm *before* "immediate, grave danger" arises, an affirmative defense for possessing one during such an event is of little use. More fundamentally, the notion that the right to be "armed and ready" in case of confrontation, *Heller*, 554 U.S. at 584, is sufficiently accommodated by a potential affirmative defense to a *criminal prosecution* for its exercise cannot be reconciled with the Supreme Court's repeated admonishments that the Second Amendment protects a fundamental right.

If anything, California's recognition—as evidenced by the availability of an affirmative defense and its Carry License exception—that carrying firearms outside the home is useful for self-defense makes its refusal to allow ordinary law-abiding citizens to carry publicly *more* constitutionally problematic, not less so. Unlike a law that tries to restrict a particular type of firearm or manner of carry on the theory that it is peculiarly dangerous or unrelated to self-defense, California's laws expressly *recognize* that carrying handguns directly furthers the constitutionally valid end of self-defense. Having acknowledged as much, California cannot limit the carrying of handguns to a subset of "the people" protected by the Second Amendment. Again, apart from any levels-of-scrutiny approach, the State's effort to limit the pursuit of a constitutionally protected end by a constitutionally protected means to only a subset of those protected by the Constitution is impermissible. It is no different—and no more constitutional—than limiting the First Amendment to those with an exceptionally good reason to criticize the government (as judged by the censor), or to restricting the Sixth Amendment right

to counsel or a criminal trial to those with an exceptional need to prove their innocence (as judged by the prosecutor).

Finally, while, as a technical matter, there are portions of unincorporated areas in California where it is legal to carry a firearm openly, the reality for most counties—especially for Los Angeles County—is that these are mostly either tiny islands in a sea of "prohibited areas," Cal. Penal Code §§ 17030, 25850(a), or seas of remote "no-mans'-land" peppered with uncharted islands of "prohibited areas." Under state law, "prohibited areas" generally include any public road or highway, as well as anywhere within 150 yards of any building. *See supra* n.1. The State also expressly describes some areas it controls as "prohibited areas." *See supra* n.1. Moreover, local laws typically create additional "prohibited areas" by ordinance. In Los Angeles County, for example, much of the county is a "prohibited area." E.R.VII 1350-53, 1357-60 (L.A. Cty., Cal., County Code of Ordinances 13.66.050, 13.66.130, 13.66.500); *see also* 13.66.130–13.66.563 (prohibiting firearm discharge in numerous designated districts) (available at https://library.municode.com/ca/los_angeles_county/codes/code_of_ordinances?nodeId=TIT13PUPEMOWE_DIV8WE_CH13.66FIBOAR). Thus, if individuals are anywhere near civilization in Los Angeles County—in other words, are pretty much anywhere in Los Angeles County where the need for self-defense might arise—they are prohibited from carrying a firearm.

Moreover, even the narrow pockets of the county where it may be legal to carry a firearm are often described in such a confusing manner that it makes it all

but impossible for average law-abiding citizens to know where their boundaries lie. Truly, nothing short of a civil engineering degree coupled with cartographic expertise could ensure avoiding legal trouble while trying to carry a firearm without a Carry License in the unincorporated portions of Los Angeles County (and most likely all other counties). In any event, even if one could determine where every "prohibited area" is located, that would not cure the more fundamental problem: The Second Amendment guarantees a right to bear arms *for self-defense*—a purpose that manifestly is not achieved by a law that allows individuals to carry firearms only if they avoid all roads, buildings, populous areas, and other regions designated off-limits by the state or county.

In short, for ordinary, law-abiding individuals like Flanagan, California's laws are, in all meaningful respects, the functional equivalent of a flat ban on publicly carrying firearms for self-defense. Because a complete ban on the exercise of a right protected by the Constitution "amounts to a destruction" of the right, California's carry prohibitions are "unconstitutional under any level of scrutiny." *Jackson*, 746 F.3d at 961 (citing *Heller*, 554 U.S. at 629).

B. California's Effective Ban on Carry by Ordinary, Law-Abiding Citizens Is Invalid Under Either Strict or Intermediate Scrutiny.

If the Court feels compelled to choose one of the traditional levels of scrutiny, strict scrutiny is the appropriate choice. In the Ninth Circuit, a "law that implicates the core of the Second Amendment right and severely burdens that right warrants strict scrutiny." *Silvester*, 843 F.3d at 821. This Court has already

concluded that "the right to carry a firearm openly for self-defense falls within the core of the Second Amendment." *Young*, 896 F.3d at 1070. By any measure, barring a law-abiding citizen like Flanagan from exercising that right "severely burdens" it. *Silvester*, 843 F.3d at 821. The district court therefore erred by applying only intermediate scrutiny, which it did on the premise that the right to carry a firearm outside the home is not within the "core" of the Second Amendment, E.R.I 9-10—a premise that *Young* has since rejected. *See Young*, 896 F.3d at 1070.

Ultimately, however, it does not matter which level of heightened scrutiny applies because California's total carry ban could not survive intermediate scrutiny. *Cf. McCutcheon v. FEC*, --U.S.--, 134 S. Ct. 1434, 1446 (2014) (plurality opinion). Intermediate scrutiny requires a "reasonable fit between the challenged regulation" and a "significant, substantial, or important" government objective. *Silvester*, 843 F.3d at 821-22. The government "bears the burden of justifying its restrictions" and "must affirmatively establish the reasonable fit" required. *Jackson*, 746 F.3d at 965. While a reasonable fit "is not necessarily perfect" and "not necessarily the least restrictive means," it must be "a means narrowly tailored to achieve the desired objective." *McCutcheon*, 134 S. Ct. at 1456-57. The ultimate goal of the fit analysis is not simply to determine whether a law reasonably advances the state's interests; "a court must *also* determine whether the government action 'burden[s] substantially more [protected conduct] than is necessary to further' that interest." *Young*, 896 F.3d at 1073 (quoting *Turner Broad. Sys., Inc. v. F.C.C.*, 520 U.S. 180, 213-14 (1997)); see also, e.g., *McCutcheon*, 134 S. Ct. at 1444.

Holding that California has shown "a reasonable fit between its open-carry laws and important governmental interests," E.R.I 13, the district court did not even try to show that California's restrictive carry regime "avoid[s] unnecessary abridgement of [Second] Amendment rights." *McCutcheon*, 572 U.S. at 199 (citing *Buckley v. Valeo*, 424 U.S. 1, 25 (1976)). To the contrary, the court itself described that regime as "*prohibiting* individuals from carrying firearms openly in public," E.R.I 12 (emphasis added)—the only conclusion it could possibly have made. For neither the State nor the Sheriff has ever suggested that there is any avenue through which Appellants could carry firearms for self-defense without a Carry License (save the magical appearance of a loaded firearm should they be confronted with "immediate" "grave danger"). By definition, prohibiting ordinary, law-abiding citizens from exercising their constitutional rights is not a remotely, let alone reasonably, tailored means of furthering any legitimate government objective. Instead, a flat ban is the quintessential *opposite* of tailoring, as it leaves open precisely zero "alternative channels" for the exercise of the right. *Jackson*, 746 F.3d at 968.

Nor is there anything remotely tailored about the cartoonish standard of "good cause" embraced by the Sheriff and permitted by the State. Two features of the standard are particularly indefensible. First, the standard requires law-abiding citizens to establish a "clear and present danger" to life and limb. That California authorities have borrowed the highly demanding standard for permitting government censorship, *see Shenk v. United States*, 249 U.S. 47 (1919),

speaks volumes about how those authorities view the Second Amendment: They want the lawful exercise of Second Amendment rights to be as rare as lawful censorship by government authorities. That makes a mockery of the Supreme Court's admonition that the Second Amendment is not "a second-class right." *McDonald*, 561 U.S. at 780 (plurality opinion). The right to bear arms, like the right to speech free from government censorship, is the constitutional norm, not a carefully limited exception. Second, the standard compounds that absence of tailoring by authorizing a license only if a law enforcement officer certifies that law enforcement resources are inadequate. Requiring a law enforcement officer to admit that his officers are not up to the task of ensuring public safety all but guarantees that licenses will not issue. That requirement is no more consistent with the Second Amendment than a law that granted a jury trial right only when the judge declared herself unable to preside impartially would be compatible with the Sixth or Seventh Amendments.

In the end, prohibiting law-abiding citizens from carrying handguns for self-defense can be justified only on the theory that allowing them to do so creates an intolerable public safety risk. Not only is that theory lacking in empirical support, *see, e.g.*, *Moore*, 702 F.3d at 937-42, and belied by the State's recognition of the value of providing for Carry Licenses and an affirmative defense to prosecution for violating the carry restrictions when one is in "immediate" "grave danger"; it is a theory that the Second Amendment takes "off the table," *Heller*, 554 U.S. at 635-36. The drafters and ratifiers who codified the right to bear arms

understood that carrying firearms poses safety risks, but they chose to protect the right anyway. The State and Sheriff McDonnell may disagree with that determination, and they may do so with the best of intentions, but they have no more authority to second-guess the people's decision to protect the right to bear arms than they do to override the protection against unreasonable searches and seizures, the inadmissibility of coerced confessions, the criminal defendant's right to confront adverse witnesses, or any other provision of the Bill of Rights with "disputed public safety implications." *McDonald*, 561 U.S. at 783 (plurality opinion). Put simply, the Second Amendment "is the very *product* of an interest balancing by the people," and the government many not "conduct [it] for them anew." *Heller*, 554 U.S. at 635; *cf. United States v. Stevens*, 559 U.S. 460, 470 (2010) ("The First Amendment itself reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs. Our Constitution forecloses any attempt to revise that judgment simply on the basis that some speech is not worth it.").

So even if the State could prove that its restrictive carry regime furthers its public safety interest (and it cannot), barring law-abiding citizens from exercising their fundamental constitutional right to bear arms simply cannot be reconciled with the Constitution. The district court's contrary conclusion is a product of its failure to accord the right to carry arms the respect that the Constitution demands. That said, the decision below also suffers from the same problem that this Court recently identified in *Young*: a "willingness to defer entirely to the State regarding

the constitutionality of" its own effort to prohibit constitutionally protected conduct. *Young*, 170 F.3d at 1073.

Here, the district court refused even to consider Appellants' substantial evidence that the State's restrictive carry regime does not meaningfully advance its policy objectives. *See* E.R.I 11-14. Indeed, it failed even to mention the many deficiencies in the State's evidence identified by Appellants, E.R.V 1061-64; E.R.VI 1067-68, 1098-1330; *see* E.R.I 11-14—deficiencies that the district court necessarily recognized when it sustained several of Appellants' objections to that evidence. E.R.I 15-33 (sustaining Appellants' objections that the opinions of the State's expert on the likely impact of allowing open carry lacked foundation). Instead, the district court declared it "the legislature's job, not ours, to weigh conflicting evidence and make policy judgments." E.R.I 13 (quoting *Kachalsky*, 701 F.3d at 99). That is, word for word, the precise reasoning that this Court just rejected in *Young*, admonishing that "we are certainly *not* evaluating a mere 'policy judgment' but rather determining the scope and application of a *constitutional right*." 170 F.3d at 1074. Moreover, not only did the district court undertake no analysis whatsoever of "whether the State could reduce gun violence through means considerably more targeted than" prohibiting ordinary, law-abiding citizens from carrying handguns, *id.* at 1073, it did not even require the State to identify substantial evidence that its carry regime furthers its public safety interest in any meaningful manner. Instead, the court asked only whether the State's evidence was "sufficient to support the inference that the State reasonably saw a link

between restrictions on the open carry of guns and the aforementioned public safety benefit." E.R.I 13. Even intermediate scrutiny demands more than a mere "link"; the State "must affirmatively establish [a] reasonable fit." *Jackson*, 746 F.3d at 965. The State did not and could not satisfy that burden here. The district court erred in holding otherwise.

* * *

Like this Court, Appellants "do not take lightly the problem of gun violence," *Young*, 170 F.3d at 1074, or seek to foreclose the State from regulating the right to bear arms in a manner consistent with the Constitution. "But the enshrinement of constitutional rights necessarily takes certain policy choices off the table," *Heller*, 554 U.S. at 634-65, and prohibiting ordinary law-abiding citizens from exercising the very right that the Constitution protects is one of them. Because California's restrictive carry regime does exactly that, it is unconstitutional.

CONCLUSION

Appellants request that this Court reverse the decision below and direct the district court to grant them the declaratory and injunctive relief prayed for.

STATEMENT OF RELATED CASES

Under Circuit Rule 28-2.6, Appellants certify that the following related cases are pending before this Court:

1. *Young v. State of Hawaii, et al.*, No. 12-17808: A challenge to Hawaii's total prohibition on typical, law-abiding adults carrying firearms in public, which resulted in an opinion from a three-judge panel of this Court ruling the prohibition unconstitutional under the Second Amendment, *Young v. Hawaii*, 896 F.3d 1044 (9th Cir. 2018). On September 14, 2018, the State of Hawaii filed a petition for en banc review of that opinion. As of the time of filing this brief, that petition remains pending this Court's decision.

2. *Nichols v. Edmund G. Brown*, No. 14-55873: A pro se challenge to California's restrictions on openly carrying firearms on the ground that the Second Amendment requires that government generally allow open carry, even if concealed carry is allowed. This appeal has been briefed and argued but the panel assigned to it vacated its submission on February 27, 2018, pending issuance of a decision in *Young v. State of Hawaii, et al.*, No. 12-17808. As of the time of filing this brief, the panel has yet to order this appeal submitted.

Date: October 2, 2018 **MICHEL & ASSOCIATES, P.C.**

/s/ C.D. Michel
C.D. Michel
Counsel for Plaintiff-Appellant
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CERTIFICATE OF COMPLIANCE

1. This brief complies with the length limits permitted by Ninth Circuit Rule 32-1 because this brief contains 11,772 words, excluding the parts of the brief exempted by Federal Rules of Appellate Procedure, rule 32(f).

2. This brief complies with the typeface requirements of Federal Rules of Appellate Procedure, rule 32(a)(5), and the type style requirements of Federal Rules of Appellate Procedure, rule 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Garamond type.

Dated: October 2, 2018

/s/ C.D. Michel
C.D. Michel

ADDENDUM

INDEX TO ADDENDUM

U.S. Const. amend. II

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed

Cal. Fish and Game Code § 3004(a)

(a) It is unlawful for a person, other than the owner, person in possession of the premises, or a person having the express permission of the owner or person in possession of the premises, while within 150 yards of an occupied dwelling house, residence, or other building, or within 150 yards of a barn or other outbuilding used in connection with an occupied dwelling house, residence, or other building, to either hunt or discharge a firearm or other deadly weapon while hunting. The 150-yard area is a safety zone.

Cal. Fish and Game Code § 10500

Except under a permit or specific authorization, it is unlawful to do any of the following:

(a) To take or possess a bird or mammal in a game refuge.

(b) To use or have in possession in a game refuge, a firearm, BB device as defined in Section 16250 of the Penal Code, crossbow, bow and arrow, or a trap or other contrivance designed to be, or capable of being, used to take birds or mammals, or to discharge a firearm or BB device or to release an arrow or crossbow bolt into a game refuge.

(c) To take or possess a fish or amphibian in a fish refuge, or to use or have in possession in that refuge a contrivance designed to be used for catching fish.

(d) To take or possess a bird, discharge a firearm or BB device, or release an arrow or crossbow bolt, within or into a waterfowl refuge.

(e) To take or possess a quail in a quail refuge.

(f) To take or possess an invertebrate or specimen of marine plant life in a marine life refuge.

(g) To take or possess a clam or an instrument or apparatus capable of being used to dig clams in a clam refuge.

Cal. Penal Code § 171

(a) Any person who brings or possesses within any state or local public building or at any meeting required to be open to the public pursuant to Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, or Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, the Government Code, any of the following is guilty of a public offense punishable by imprisonment in a county jail for not more than one year, or in the state prison:

(1) Any firearm.

(2) Any deadly weapon described in Section 17235 or in any provision listed in Section 16590.

(3) Any knife with a blade length in excess of four inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands.

(4) Any unauthorized tear gas weapon.

(5) Any taser or stun gun, as defined in Section 244.5.

(6) Any instrument that expels a metallic projectile, such as a BB or pellet, through the force of air pressure, CO2 pressure, or spring action, or any spot marker gun or paint gun.

(b) Subdivision (a) shall not apply to, or affect, any of the following:

(1) A person who possesses weapons in, or transports weapons into, a court of law to be used as evidence.

(2) (A) A duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a retired peace officer with authorization to carry concealed weapons as described in Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, or any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer.

(B) Notwithstanding subparagraph (A), subdivision (a) shall apply to any person who brings or possesses any weapon specified therein within any courtroom if he or she is a party to an action pending before the court.

(3) A person holding a valid license to carry the firearm pursuant to Chapter 4 (commencing with Section 26150) of Division 5 of Title 4 of Part 6.

(4) A person who has permission to possess that weapon granted in writing by a duly authorized official who is in charge of the security of the state or local government building.

(5) A person who lawfully resides in, lawfully owns, or is in lawful possession of, that building with respect to those portions of the building that are not owned or leased by the state or local government.

(6) A person licensed or registered in accordance with, and acting within the course and scope of, Chapter 11.5 (commencing with Section 7512) or Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code who has been hired by the owner or manager of the building if the person has permission pursuant to paragraph (5).

(7) (A) A person who, for the purpose of sale or trade, brings any weapon that may otherwise be lawfully transferred, into a gun show conducted pursuant to Article 1 (commencing with Section 27200) and Article 2 (commencing with Section 27300) of Chapter 3 of Division 6 of Title 4 of Part 6.

(B) A person who, for purposes of an authorized public exhibition, brings any weapon that may otherwise be lawfully possessed, into a gun show conducted pursuant to Article 1 (commencing with Section 27200) and Article 2 (commencing with Section 27300) of Chapter 3 of Division 6 of Title 4 of Part 6.

(c) As used in this section, state or local public building means a building that meets all of the following criteria:

(1) It is a building or part of a building owned or leased by the state or local government, if state or local public employees are regularly present for the purposes of performing their official duties. A state or local public building includes, but is not limited to, a building that contains a courtroom.

(2) It is not a building or facility, or a part thereof, that is referred to in Section 171c, 171d, 626.9, 626.95, or 626.10 of this code, or in Section 18544 of the Elections Code.

(3) It is a building not regularly used, and not intended to be used, by state or local employees as a place of residence.

Cal. Penal Code § 171.7(b)(1)

It is unlawful for any person to knowingly possess within any sterile area of a public transit facility any of the following, if the sterile area is posted with a statement providing reasonable notice that prosecution may result from possession of these items:

(1) Any firearm.

Cal. Penal Code § 374

Every person who shoots any firearm from or upon a public road or highway is guilty of a misdemeanor.

Cal. Penal Code § 626.9

(a) This section shall be known, and may be cited, as the Gun-Free School Zone Act of 1995.

(b) Any person who possesses a firearm in a place that the person knows, or reasonably should know, is a school zone, as defined in paragraph (4) of subdivision (e), shall be punished as specified in subdivision (f).

(c) Subdivision (b) does not apply to the possession of a firearm under any of the following circumstances:

(1) Within a place of residence or place of business or on private property, if the place of residence, place of business, or private property is not part of the school grounds and the possession of the firearm is otherwise lawful.

(2) When the firearm is an unloaded pistol, revolver, or other firearm capable of being concealed on the person and is in a locked container or within the locked trunk of a motor vehicle.

This section does not prohibit or limit the otherwise lawful transportation of any other firearm, other than a pistol, revolver, or other firearm capable of being concealed on the person, in accordance with state law.

(3) When the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This subdivision does not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. Upon a trial for violating subdivision (b), the trier of a fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

(4) When the person is exempt from the prohibition against carrying a concealed firearm pursuant to Section 25615 , 25625 , 25630 , or 25645 .

(5) When the person holds a valid license to carry the firearm pursuant to Chapter 4 (commencing with Section 26150) of Division 5 of Title 4 of Part 6, who is carrying that firearm in an area that is not in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but within a distance of 1,000 feet from the grounds of the public or private school.

(d) Except as provided in subdivision (b), it shall be unlawful for any person, with reckless disregard for the safety of another, to discharge, or attempt to discharge, a firearm in a school zone, as defined in paragraph (4) of subdivision (e).

The prohibition contained in this subdivision does not apply to the discharge of a firearm to the extent that the conditions of paragraph (1) of subdivision (c) are satisfied.

(e) As used in this section, the following definitions shall apply:

(1) "Concealed firearm" has the same meaning as that term is given in Sections 25400 and 25610 .

(2) "Firearm" has the same meaning as that term is given in subdivisions (a) to (d), inclusive, of Section 16520 .

(3) "Locked container" has the same meaning as that term is given in Section 16850 .

(4) "School zone" means an area in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, or within a distance of 1,000 feet from the grounds of the public or private school.

(f)(1) A person who violates subdivision (b) by possessing a firearm in, or on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years.

(2) A person who violates subdivision (b) by possessing a firearm within a distance of 1,000 feet from the grounds of a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, shall be punished as follows:

(A) By imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years, if any of the following circumstances apply:

(i) If the person previously has been convicted of any felony, or of any crime made punishable by any provision listed in Section 16580 .

(ii) If the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of Title 4 of Part 6 of this code or Section 8100 or 8103 of the Welfare and Institutions Code .

(iii) If the firearm is any pistol, revolver, or other firearm capable of being concealed upon the person and the offense is punished as a felony pursuant to Section 25400 .

(B) By imprisonment in a county jail for not more than one year or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years, in all cases other than those specified in subparagraph (A).

(3) A person who violates subdivision (d) shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for three, five, or seven years.

(g)(1) A person convicted under this section for a misdemeanor violation of subdivision (b) who has been convicted previously of a misdemeanor offense enumerated in Section 23515 shall be punished by imprisonment in a county jail for not less than three months, or if probation is granted or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(2) A person convicted under this section of a felony violation of subdivision (b) or (d) who has been convicted previously of a misdemeanor offense enumerated in Section 23515 , if probation is granted or if the execution of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(3) A person convicted under this section for a felony violation of subdivision (b) or (d) who has been convicted previously of any felony, or of any crime made punishable by any provision listed in Section 16580 , if probation is granted or if the execution or imposition of sentence is suspended, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than three months.

(4) The court shall apply the three-month minimum sentence specified in this subdivision, except in unusual cases where the interests of justice would best be served by granting probation or suspending the execution or imposition of sentence without the minimum imprisonment required in this subdivision or by granting probation or suspending the execution or imposition of sentence with conditions other than those set forth in this subdivision, in which case the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by this disposition.

(h) Notwithstanding Section 25605 , any person who brings or possesses a loaded firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years. Notwithstanding subdivision (k), a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this subdivision.

(i) Notwithstanding Section 25605 , any person who brings or possesses a firearm upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for one, two, or three years. Notwithstanding subdivision (k), a university or college shall post a prominent notice at primary entrances on noncontiguous property stating that firearms are prohibited on that property pursuant to this subdivision.

(j) For purposes of this section, a firearm shall be deemed to be loaded when there is an unexpended cartridge or shell, consisting of a case that holds a charge of powder and a bullet or shot, in, or attached in any manner to, the firearm, including, but not limited to, in the firing chamber, magazine, or clip thereof attached to the firearm. A muzzle-loader firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder.

(k) This section does not require that notice be posted regarding the proscribed conduct.

(*l*) This section does not apply to a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer, a member of the military forces of this state or of the United States who is engaged in the performance of his or her duties, or an armored vehicle guard, engaged in the performance of his or her duties, as defined in subdivision (d) of Section 7582.1 of the Business and Professions Code .

(m) This section does not apply to a security guard authorized to carry a loaded firearm pursuant to Article 4 (commencing with Section 26000) of Chapter 3 of Division 5 of Title 4 of Part 6.

(n) This section does not apply to an existing shooting range at a public or private school or university or college campus.

(*o*) This section does not apply to an honorably retired peace officer authorized to carry a concealed or loaded firearm pursuant to any of the following:

(1) Article 2 (commencing with Section 25450) of Chapter 2 of Division 5 of Title 4 of Part 6.

(2) Section 25650 .

(3) Sections 25900 to 25910 , inclusive.

(4) Section 26020 .

(5) Paragraph (2) of subdivision (c) of Section 26300 .

(p) This section does not apply to a peace officer appointed pursuant to Section 830.6 who is authorized to carry a firearm by the appointing agency.

(q)(1) This section does not apply to the activities of a program involving shooting sports or activities, including, but not limited to, trap shooting, skeet shooting, sporting clays, and pistol shooting, that are sanctioned by a school, school district, college, university, or other governing body of the institution, that occur on the grounds of a public or private school or university or college campus.

(2) This section does not apply to the activities of a state-certified hunter education program pursuant to Section 3051 of the Fish and Game Code if all firearms are unloaded and participants do not possess live ammunition in a school building.

Cal. Penal Code § 17030

As used in this part, "prohibited area" means any place where it is unlawful to discharge a weapon.

Cal. Penal Code § 25400

(a) A person is guilty of carrying a concealed firearm when the person does any of the following:

(1) Carries concealed within any vehicle that is under the person s control or direction any pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Carries concealed upon the person any pistol, revolver, or other firearm capable of being concealed upon the person.

(3) Causes to be carried concealed within any vehicle in which the person is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person.

(b) A firearm carried openly in a belt holster is not concealed within the meaning of this section.

(c) Carrying a concealed firearm in violation of this section is punishable as follows:

(1) If the person previously has been convicted of any felony, or of any crime made punishable by a provision listed in Section 16580, as a felony.

(2) If the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony.

(3) If the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22, under the Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

(4) If the person is not in lawful possession of the firearm or the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, as a felony.

(5) If the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment pursuant to subdivision (h) of Section 1170, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(6) If both of the following conditions are met, by imprisonment pursuant to subdivision (h) of Section 1170, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment:

(A) The pistol, revolver, or other firearm capable of being concealed upon the person is loaded, or both it and the unexpended ammunition capable of being discharged from it are in the immediate possession of the person or readily accessible to that person.

(B) The person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of that pistol, revolver, or other firearm capable of being concealed upon the person.

(7) In all cases other than those specified in paragraphs (1) to (6), inclusive, by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(d) (1) Every person convicted under this section who previously has been convicted of a misdemeanor offense enumerated in Section 23515 shall be punished by imprisonment in a county jail for at least three months and not exceeding six months, or, if granted probation, or if the

execution or imposition of sentence is suspended, it shall be a condition thereof that the person be imprisoned in a county jail for at least three months.

(2) Every person convicted under this section who has previously been convicted of any felony, or of any crime made punishable by a provision listed in Section 16580, if probation is granted, or if the execution or imposition of sentence is suspended, it shall be a condition thereof that the person be imprisoned in a county jail for not less than three months.

(e) The court shall apply the three-month minimum sentence as specified in subdivision (d), except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in subdivision (d) or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in subdivision (d), in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(f) A peace officer may arrest a person for a violation of paragraph (6) of subdivision (c) if the peace officer has probable cause to believe that the person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of the pistol, revolver, or other firearm capable of being concealed upon the person, and one or more of the conditions in subparagraph (A) of paragraph (6) of subdivision (c) is met.

Cal. Penal Code § 25505

In order for a firearm to be exempted under this article, while being transported to or from a place, the firearm shall be unloaded and kept in a locked container, and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

Cal. Penal Code § 25510

Section 25400 does not apply to, or affect, any of the following:

(a) The possession of a firearm by an authorized participant in a motion picture, television, or video production, or an entertainment event, when the participant lawfully uses the firearm as part of that production or event, or while going directly to, or coming directly from, that production or event.

(b) The transportation of a firearm by an authorized employee or agent of a supplier of firearms when going directly to, or coming directly from, a motion picture, television, or video production, or an entertainment event, for the purpose of providing that firearm to an authorized participant to lawfully use as a part of that production or event.

Cal. Penal Code § 25515

Section 25400 does not apply to, or affect, the possession of a firearm in a locked container by a member of any club or organization, organized for the purpose of lawfully collecting and lawfully displaying pistols, revolvers, or other firearms, while the member is at a meeting of the club or

organization or while going directly to, and coming directly from, a meeting of the club or organization.

Cal. Penal Code § 25520

Section 25400 does not apply to, or affect, the transportation of a firearm by a participant when going directly to, or coming directly from, a recognized safety or hunter safety class, or a recognized sporting event involving that firearm.

Cal. Penal Code § 25525

(a) Section 25400 does not apply to, or affect, the transportation of a firearm by any citizen of the United States or legal resident over the age of 18 years who resides or is temporarily within this state, and who is not within the excepted classes prescribed by Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, directly between any of the following places:

(1) The person s place of residence.

(2) The person s place of business.

(3) Private property owned or lawfully possessed by the person.

(b) Section 25400 does not apply to, or affect, the transportation of a firearm by a person listed in subdivision (a) when going directly from the place where that person lawfully received that firearm to that person s place of residence or place of business or to private property owned or lawfully possessed by that person.

Cal. Penal Code § 25530

Section 25400 does not apply to, or affect, the transportation of a firearm by a person when going directly to, or coming directly from, a fixed place of business or private residential property for the purpose of the lawful repair or the lawful sale, loan, or transfer of that firearm.

Cal. Penal Code § 25535

Section 25400 does not apply to, or affect, any of the following:

(a) The transportation of a firearm by a person when going directly to, or coming directly from, a gun show, swap meet, or similar event to which the public is invited, for the purpose of displaying that firearm in a lawful manner.

(b) The transportation of a firearm by a person when going directly to, or coming directly from, a gun show or event, as defined in Section 478.100 of Title 27 of the Code of Federal Regulations, for the purpose of lawfully transferring, selling, or loaning that firearm in accordance with Section 27545.

Cal. Penal Code § 25540

Section 25400 does not apply to, or affect, the transportation of a firearm by a person when going directly to, or coming directly from, a target range, which holds a regulatory or business license, for the purposes of practicing shooting at targets with that firearm at that target range.

Cal. Penal Code § 25545

Section 25400 does not apply to, or affect, the transportation of a firearm by a person when going directly to, or coming directly from, a place designated by a person authorized to issue licenses pursuant to Section 26150, 26155, 26170, or 26215, when done at the request of the issuing agency so that the issuing agency can determine whether or not a license should be issued to that person to carry that firearm.

Cal. Penal Code § 25550

(a) Section 25400 does not apply to, or affect, the transportation of a firearm by a person when going directly to, or coming directly from, a lawful camping activity for the purpose of having that firearm available for lawful personal protection while at the lawful campsite.

(b) This section shall not be construed to override the statutory authority granted to the Department of Parks and Recreation or any other state or local governmental agencies to promulgate rules and regulations governing the administration of parks and campgrounds.

Cal. Penal Code § 25555

Section 25400 does not apply to, or affect, the transportation of a firearm by a person in order to comply with Section 27870, 27875, 27915, 27920, or 27925, as it pertains to that firearm.

Cal. Penal Code § 25560

Section 25400 does not apply to, or affect, the transportation of a firearm by a person in order to utilize Section 28000 as it pertains to that firearm.

Cal. Penal Code § 25565

Section 25400 does not apply to, or affect, the transportation of a firearm by a person in order to sell, deliver, or transfer the firearm as specified in Section 27850 or 31725 to an authorized representative of a city, city and county, county, or state or federal government that is acquiring the weapon as part of an authorized, voluntary program in which the entity is buying or receiving weapons from private individuals.

Cal. Penal Code § 25570

Section 25400 does not apply to, or affect, any of the following:

(a) The transportation of a firearm by a person who finds the firearm, if the person is transporting the firearm in order to comply with Article 1 (commencing with Section 2080) of Chapter 4 of

Division 3 of the Civil Code as it pertains to that firearm, and, if the person is transporting the firearm to a law enforcement agency, the person gives prior notice to the law enforcement agency that the person is transporting the firearm to the law enforcement agency.

(b) The transportation of a firearm by a person who finds the firearm and is transporting it to a law enforcement agency for disposition according to law, if the person gives prior notice to the law enforcement agency that the person is transporting the firearm to the law enforcement agency for disposition according to law.

Cal. Penal Code § 25575

Section 25400 does not apply to, or affect, the transportation of a firearm by a person in order to comply with Section 27560 as it pertains to that firearm.

Cal. Penal Code § 25580

Section 25400 does not apply to, or affect, the transportation of a firearm that is a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations, by a person in order to comply with Section 27565 as it pertains to that firearm.

Cal. Penal Code § 25585

Section 25400 does not apply to, or affect, the transportation of a firearm by a person for the purpose of obtaining an identification number or mark assigned to that firearm from the Department of Justice pursuant to Section 23910.

Cal. Penal Code § 25590

Section 25400 does not apply to, or affect, the transportation of a firearm by a person if done directly between any of the places set forth below:

(a) A place where the person may carry that firearm pursuant to an exemption from the prohibition set forth in subdivision (a) of Section 25400.

(b) A place where that person may carry that firearm pursuant to an exemption from the prohibition set forth in subdivision (a) of Section 25850, or a place where the prohibition set forth in subdivision (a) of Section 25850 does not apply.

(c) A place where that person may carry a firearm pursuant to an exemption from the prohibition set forth in subdivision (a) of Section 26350, or a place where the prohibition set forth in subdivision (a) of Section 26350 does not apply.

Cal. Penal Code § 25595

This article does not prohibit or limit the otherwise lawful carrying or transportation of any handgun in accordance with the provisions listed in Section 16580.

Cal. Penal Code § 25600

A violation of Section 25400 is justifiable when a person who possesses a firearm reasonably believes that person is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person who has been found to pose a threat to the life or safety of the person who possesses the firearm. This section may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Codeabsent a factual finding of a specific threat to the person's life or safety. It is not the intent of the Legislature to limit, restrict, or narrow the application of current statutory or judicial authority to apply this or other justifications to a defendant charged with violating Section 25400 or committing another similar offense.

(b) Upon trial for violating Section 25400 , the trier of fact shall determine whether the defendant was acting out of a reasonable belief that the defendant was in grave danger.

Cal. Penal Code § 25605

(a) Section 25400 and Chapter 6 (commencing with Section 26350) of Division 5 shall not apply to or affect any citizen of the United States or legal resident over the age of 18 years who resides or is temporarily within this state, and who is not within the excepted classes prescribed by Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, who carries, either openly or concealed, anywhere within the citizen s or legal resident s place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident, any handgun.

(b) No permit or license to purchase, own, possess, keep, or carry, either openly or concealed, shall be required of any citizen of the United States or legal resident over the age of 18 years who resides or is temporarily within this state, and who is not within the excepted classes prescribed by Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, to purchase, own, possess, keep, or carry, either openly or concealed, a handgun within the citizen s or legal resident s place of residence, place of business, or on private property owned or lawfully possessed by the citizen or legal resident.

(c) Nothing in this section shall be construed as affecting the application of Sections 25850 to 26055, inclusive.

Cal. Penal Code § 25610

(a) Section 25400 shall not be construed to prohibit any citizen of the United States over the age of 18 years who resides or is temporarily within this state, and who is not prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, from transporting or carrying any pistol, revolver, or other firearm capable of being concealed upon the person, provided that the following applies to the firearm:

(1) The firearm is within a motor vehicle and it is locked in the vehicle's trunk or in a locked container in the vehicle.

(2) The firearm is carried by the person directly to or from any motor vehicle for any lawful purpose and, while carrying the firearm, the firearm is contained within a locked container.

(b) The provisions of this section do not prohibit or limit the otherwise lawful carrying or transportation of any pistol, revolver, or other firearm capable of being concealed upon the person in accordance with the provisions listed in Section 16580 .

Cal. Penal Code § 25612

A person shall, when leaving a handgun in an unattended vehicle, secure the handgun in the vehicle pursuant to Section 25140.

Cal. Penal Code § 25615

Section 25400 does not apply to, or affect, the possession or transportation of unloaded pistols, revolvers, or other firearms capable of being concealed upon the person as merchandise by a person who is engaged in the business of manufacturing, importing, wholesaling, repairing, or dealing in firearms and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while engaged in the lawful course of the business.

Cal. Penal Code § 25620

Section 25400 does not apply to, or affect, the possession or transportation of unloaded pistols, revolvers, or other firearms capable of being concealed upon the person as merchandise by a person who is engaged in the business of manufacturing, importing, wholesaling, repairing, or dealing in firearms and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while engaged in the lawful course of the business.

Cal. Penal Code § 25625

Section 25400 does not apply to, or affect, the carrying of unloaded pistols, revolvers, or other firearms capable of being concealed upon the person by duly authorized military or civil organizations while parading, or the members thereof when going to and from the places of meeting of their respective organizations.

Cal. Penal Code § 25630

Section 25400 does not apply to, or affect, the carrying of unloaded pistols, revolvers, or other firearms capable of being concealed upon the person by duly authorized military or civil organizations while parading, or the members thereof when going to and from the places of meeting of their respective organizations.

Cal. Penal Code § 25635

Section 25400 does not apply to, or affect, members of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using pistols, revolvers, or other firearms capable of being concealed upon

the person upon the target ranges, or transporting these firearms unloaded when going to and from the ranges.

Cal. Penal Code § 25640

Section 25400 does not apply to, or affect, members of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using pistols, revolvers, or other firearms capable of being concealed upon the person upon the target ranges, or transporting these firearms unloaded when going to and from the ranges.

Cal. Penal Code § 25645

Section 25400 does not apply to, or affect, the transportation of unloaded firearms by a person operating a licensed common carrier or an authorized agent or employee thereof when the firearms are transported in conformance with applicable federal law.

Cal. Penal Code § 25650

Section 25400 does not apply to, or affect, the transportation of unloaded firearms by a person operating a licensed common carrier or an authorized agent or employee thereof when the firearms are transported in conformance with applicable federal law.

Cal. Penal Code § 25655

Section 25400 does not apply to, or affect, the carrying of a pistol, revolver, or other firearm capable of being concealed upon the person by a person who is authorized to carry that weapon in a concealed manner pursuant to Chapter 4 (commencing with Section 26150).

Cal. Penal Code § 25700

(a) The unlawful carrying of any handgun in violation of Section 25400 is a nuisance and is subject to Sections 18000 and 18005.

(b) This section does not apply to any of the following:

(1) Any firearm in the possession of the Department of Fish and Game.

(2) Any firearm that was used in the violation of any provision of the Fish and Game Code or any regulation adopted pursuant thereto.

(3) Any firearm that is forfeited pursuant to Section 5008.6 of the Public Resources Code.

Cal. Penal Code § 25800

(a) Every person who carries a loaded firearm with the intent to commit a felony is guilty of armed criminal action.

(b) Armed criminal action is punishable by imprisonment in a county jail not exceeding one year, or in the state prison.

Cal. Penal Code § 25850

(a) A person is guilty of carrying a loaded firearm when the person carries a loaded firearm on the person or in a vehicle while in any public place or on any public street in an incorporated city or in any public place or on any public street in a prohibited area of unincorporated territory.

(b) In order to determine whether or not a firearm is loaded for the purpose of enforcing this section, peace officers are authorized to examine any firearm carried by anyone on the person or in a vehicle while in any public place or on any public street in an incorporated city or prohibited area of an unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to this section constitutes probable cause for arrest for violation of this section.

(c) Carrying a loaded firearm in violation of this section is punishable, as follows:

(1) Where the person previously has been convicted of any felony, or of any crime made punishable by a provision listed in Section 16580 , as a felony.

(2) Where the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony.

(3) Where the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22, under the Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

(4) Where the person is not in lawful possession of the firearm, or is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code , as a felony.

(5) Where the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment pursuant to subdivision (h) of Section 1170 , or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(6) Where the person is not listed with the Department of Justice pursuant to Section 11106 as the registered owner of the handgun, by imprisonment pursuant to subdivision (h) of Section 1170 , or by imprisonment in a county jail not to exceed one year, or by a fine not to exceed one thousand dollars ($1,000), or both that fine and imprisonment.

(7) In all cases other than those specified in paragraphs (1) to (6), inclusive, as a misdemeanor, punishable by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars ($1,000), or by both that imprisonment and fine.

(d)(1) Every person convicted under this section who has previously been convicted of an offense enumerated in Section 23515 , or of any crime made punishable under a provision listed in Section 16580 , shall serve a term of at least three months in a county jail, or, if granted probation or if the execution or imposition of sentence is suspended, it shall be a condition thereof that the person be imprisoned for a period of at least three months.

(2) The court shall apply the three-month minimum sentence except in unusual cases where the interests of justice would best be served by granting probation or suspending the imposition or execution of sentence without the minimum imprisonment required in this section or by granting probation or suspending the imposition or execution of sentence with conditions other than those set forth in this section, in which case, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) A violation of this section that is punished by imprisonment in a county jail not exceeding one year shall not constitute a conviction of a crime punishable by imprisonment for a term exceeding one year for the purposes of determining federal firearms eligibility under Section 922(g)(1) of Title 18 of the United States Code .

(f) Nothing in this section, or in Article 3 (commencing with Section 25900) or Article 4 (commencing with Section 26000), shall preclude prosecution under Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, Section 8100 or 8103 of the Welfare and Institutions Code , or any other law with a greater penalty than this section.

(g) Notwithstanding paragraphs (2) and (3) of subdivision (a) of Section 836 , a peace officer may make an arrest without a warrant:

(1) When the person arrested has violated this section, although not in the officer's presence.

(2) Whenever the officer has reasonable cause to believe that the person to be arrested has violated this section, whether or not this section has, in fact, been violated.

(h) A peace officer may arrest a person for a violation of paragraph (6) of subdivision (c), if the peace officer has probable cause to believe that the person is carrying a handgun in violation of this section and that person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106 as the registered owner of that handgun.

Cal. Penal Code § 25900

As provided in this article, Section 25850 does not apply to any of the following:

(a) Any peace officer, listed in Section 830.1 or 830.2, or subdivision (a) of Section 830.33 , whether active or honorably retired.

(b) Any other duly appointed peace officer.

(c) Any honorably retired peace officer listed in subdivision (c) of Section 830.5 .

(d) Any other honorably retired peace officer who during the course and scope of his or her appointment as a peace officer was authorized to, and did, carry a firearm.

(e) Any full-time paid peace officer of another state or the federal government who is carrying out official duties while in California.

(f) Any person summoned by any of these officers to assist in making arrests or preserving the peace while the person is actually engaged in assisting that officer.

Cal. Penal Code § 25910

(a)(1) Any peace officer described in Section 25900 who has been honorably retired shall be issued an identification certificate by the law enforcement agency from which the officer has retired.

(2) If the agency from which the officer has retired is no longer providing law enforcement services or the relevant governmental body is dissolved, the agency that subsequently provides law enforcement services for that jurisdiction shall issue the identification certificate to that peace officer. This paragraph shall apply only if the following conditions are met:

(A) The successor agency is in possession of the retired officer's complete personnel records or can otherwise verify the retired officer's honorably retired status.

(B) The retired officer is in compliance with all the requirements of the successor agency for the issuance of a retirement identification card and concealed weapon endorsement.

(b) The issuing agency may charge a fee necessary to cover any reasonable expenses incurred by the agency in issuing certificates pursuant to Sections 25900 , 25910 , 25925 , and this section.

(c) Any officer, except an officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33 , or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall have an endorsement on the identification certificate stating that the issuing agency approves the officer's carrying of a loaded firearm.

(d) An honorably retired peace officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33 , or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall not be required to obtain an endorsement from the issuing agency to carry a loaded firearm.

Cal. Penal Code § 25915

Every five years, a retired peace officer, except an officer listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33 , or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, shall petition the issuing agency, or a successor agency pursuant to paragraph (2) of subdivision (a) of Section 25905 , for renewal of the privilege to carry a loaded firearm.

Cal. Penal Code § 25920

(a) The agency from which a peace officer is honorably retired, or a successor agency pursuant to paragraph (2) of subdivision (a) of Section 25905 , may, upon initial retirement of the peace officer, or at any time subsequent thereto, deny or revoke for good cause the retired officer's privilege to carry a loaded firearm.

(b) A peace officer who is listed in Section 830.1 or 830.2, subdivision (a) of Section 830.33 , or subdivision (c) of Section 830.5 who is retired prior to January 1, 1981, shall have the privilege to carry a loaded firearm denied or revoked by having the agency from which the officer retired, or a successor agency pursuant to paragraph (2) of subdivision (a) of Section 25905 , stamp on the officer's identification certificate "No CCW privilege."

Cal. Penal Code § 25925

(a) An honorably retired peace officer who is listed in subdivision (c) of Section 830.5 and authorized to carry a loaded firearm by this article shall meet the training requirements of Section 832 and shall qualify with the firearm at least annually.

(b) The individual retired peace officer shall be responsible for maintaining eligibility to carry a loaded firearm.

(c) The Department of Justice shall provide subsequent arrest notification pursuant to Section 11105.2regarding honorably retired peace officers listed in subdivision (c) of Section 830.5 to the agency from which the officer has retired, or a successor agency pursuant to paragraph (2) of subdivision (a) of Section 25905.

Cal. Penal Code § 26000

Section 25850 does not apply to members of the military forces of this state or of the United States engaged in the performance of their duties.

Cal. Penal Code § 26005

Section 25850 does not apply to either of the following:

(a) Persons who are using target ranges for the purpose of practice shooting with a firearm.

(b) Members of shooting clubs while hunting on the premises of those clubs.

Cal. Penal Code § 26010

Section 25850 does not apply to the carrying of any handgun by any person as authorized pursuant to Chapter 4 (commencing with Section 26150) of Division 5.

Cal. Penal Code § 26015

Section 25850 does not apply to any armored vehicle guard, as defined in Section 7582.1 of the Business and Professions Code , if either of the following conditions is satisfied:

(a) The guard was hired prior to January 1, 1977, and is acting within the course and scope of employment.

(b) The guard was hired on or after January 1, 1977, has received a firearms qualification card from the Department of Consumer Affairs, and is acting within the course and scope of employment.

Cal. Penal Code § 26020

(a) Upon approval of the sheriff of the county in which the retiree resides, Section 25850 does not apply to any honorably retired federal officer or agent of any federal law enforcement agency, including, but not limited to, the Federal Bureau of Investigation, the United States Secret Service, the United States Customs Service, the federal Bureau of Alcohol, Tobacco, Firearms and Explosives, the Federal Bureau of Narcotics, the United States Drug Enforcement Administration, the United States Border Patrol, and any officer or agent of the Internal Revenue Service who was authorized to carry weapons while on duty, who was assigned to duty within the state for a period of not less than one year, or who retired from active service in the state.

(b) A retired federal officer or agent shall provide the sheriff with certification from the agency from which the officer or agent retired certifying that person's service in the state, stating the nature of that person's retirement, and indicating the agency's concurrence that the retired federal officer or agent should be accorded the privilege of carrying a loaded firearm.

(c) Upon approval, the sheriff shall issue a permit to the retired federal officer or agent indicating that the retiree may carry a loaded firearm in accordance with this section. The permit shall be valid for a period not exceeding five years, shall be carried by the retiree while carrying a loaded firearm, and may be revoked for good cause.

(d) The sheriff of the county in which the retired federal officer or agent resides may require recertification prior to a permit renewal, and may suspend the privilege for cause. The sheriff may charge a fee necessary to cover any reasonable expenses incurred by the county.

Cal. Penal Code § 26025

Section 25850 does not apply to any of the following who have completed a regular course in firearms training approved by the Commission on Peace Officer Standards and Training:

(a) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also, under the express terms of the charter, satisfy all of the following requirements:

(1) They are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial.

(2) They are not less than 18 years of age or more than 40 years of age.

(3) They possess physical qualifications prescribed by the commission.

(4) They are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(b) Animal control officers or zookeepers, regularly compensated in that capacity by a governmental agency, when carrying weapons while acting in the course and scope of their employment and when designated by a local ordinance or, if the governmental agency is not authorized to act by ordinance, by a resolution, either individually or by class, to carry the weapons.

(c) Persons who are authorized to carry the weapons pursuant to Section 14502 of the Corporations Code , while actually engaged in the performance of their duties pursuant to that section.

(d) Harbor police officers designated pursuant to Section 663.5 of the Harbors and Navigation Code .

Cal. Penal Code § 26030

(a) Section 25850 does not apply to any of the following who have been issued a certificate pursuant to subdivision (d):

(1) Guards or messengers of common carriers, banks, and other financial institutions, while actually employed in and about the shipment, transportation, or delivery of any money, treasure, bullion, bonds, or other thing of value within this state.

(2) Guards of contract carriers operating armored vehicles pursuant to California Highway Patrol and Public Utilities Commission authority, if they were hired prior to January 1, 1977.

(3) Guards of contract carriers operating armored vehicles pursuant to California Highway Patrol and Public Utilities Commission authority, if they were hired on or after January 1, 1977, and they have completed a course in the carrying and use of firearms that meets the standards prescribed by the Department of Consumer Affairs.

(4) Private investigators licensed pursuant to Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(5) Uniformed employees of private investigators licensed pursuant to Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(6) Private patrol operators licensed pursuant to Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(7) Uniformed employees of private patrol operators licensed pursuant to Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(8) Alarm company operators licensed pursuant to Chapter 11.6 (commencing with Section 7590) of Division 3 of the Business and Professions Code, while acting within the course and scope of their employment.

(9) Uniformed security guards or night watch persons employed by any public agency, while acting within the scope and course of their employment.

(10) Uniformed security guards, regularly employed and compensated in that capacity by persons engaged in any lawful business, and uniformed alarm agents employed by an alarm company operator, while actually engaged in protecting and preserving the property of their employers, or on duty or en route to or from their residences or their places of employment, and security guards and alarm agents en route to or from their residences or employer-required range training.

(b) Nothing in paragraph (10) of subdivision (a) shall be construed to prohibit cities and counties from enacting ordinances requiring alarm agents to register their names.

(c) A certificate under this section shall not be required of any person who is a peace officer, who has completed all training required by law for the exercise of the person's power as a peace officer, and who is employed while not on duty as a peace officer.

(d) The Department of Consumer Affairs may issue a certificate to any person referred to in this section, upon notification by the school where the course was completed, that the person has successfully completed a course in the carrying and use of firearms and a course of training in the exercise of the powers of arrest, which meet the standards prescribed by the department pursuant to Section 7583.5 of the Business and Professions Code .

Cal. Penal Code § 26035

Nothing in Section 25850 shall prevent any person engaged in any lawful business, including a nonprofit organization, or any officer, employee, or agent authorized by that person for lawful purposes connected with that business, from having a loaded firearm within the person's place of business, or any person in lawful possession of private property from having a loaded firearm on that property.

Cal. Penal Code § 26040

Nothing in Section 25850 shall prevent any person from carrying a loaded firearm in an area within an incorporated city while engaged in hunting, provided that the hunting at that place and time is not prohibited by the city council.

Cal. Penal Code § 26045

(a) Nothing in Section 25850 is intended to preclude the carrying of any loaded firearm, under circumstances where it would otherwise be lawful, by a person who reasonably believes that any person or the property of any person is in immediate, grave danger and that the carrying of the weapon is necessary for the preservation of that person or property.

(b) A violation of Section 25850 is justifiable when a person who possesses a firearm reasonably believes that person is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person who has been found to pose a threat to the life or safety of the person who possesses the firearm. This subdivision may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person s life or safety. It is not the intent of the Legislature to limit, restrict, or narrow the application of current statutory or judicial authority to apply this or other justifications to a defendant charged with violating Section 25400 or committing another similar offense. Upon trial for violating Section 25850, the trier of fact shall determine whether the defendant was acting out of a reasonable belief that the defendant was in grave danger.

(c) As used in this section, immediate means the brief interval before and after the local law enforcement agency, when reasonably possible, has been notified of the danger and before the arrival of its assistance.

Cal. Penal Code § 26050

Nothing in Section 25850 is intended to preclude the carrying of a loaded firearm by any person while engaged in the act of making or attempting to make a lawful arrest.

Cal. Penal Code § 26055

Nothing in Section 25850 shall prevent any person from having a loaded weapon, if it is otherwise lawful, at the person's place of residence, including any temporary residence or campsite.

Cal. Penal Code § 26060

Nothing in Section 25850 shall prevent any person from storing aboard any vessel or aircraft any loaded or unloaded rocket, rocket propelled projectile launcher, or similar device designed primarily for emergency or distress signaling purposes, or from possessing that type of a device while in a permitted hunting area or traveling to or from a permitted hunting area and carrying a valid California permit or license to hunt.

Cal. Penal Code § 26100

(a) It is a misdemeanor for a driver of any motor vehicle or the owner of any motor vehicle, whether or not the owner of the vehicle is occupying the vehicle, knowingly to permit any other person to carry into or bring into the vehicle a firearm in violation of Section 25850 of this code or Section 2006 of the Fish and Game Code .

(b) Any driver or owner of any vehicle, whether or not the owner of the vehicle is occupying the vehicle, who knowingly permits any other person to discharge any firearm from the vehicle is punishable by imprisonment in the county jail for not more than one year or in state prison for 16 months or two or three years.

(c) Any person who willfully and maliciously discharges a firearm from a motor vehicle at another person other than an occupant of a motor vehicle is guilty of a felony punishable by imprisonment in state prison for three, five, or seven years.

(d) Except as provided in Section 3002 of the Fish and Game Code , any person who willfully and maliciously discharges a firearm from a motor vehicle is guilty of a public offense punishable by imprisonment in the county jail for not more than one year or in the state prison.

Cal. Penal Code § 26150

(a) When a person applies for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person, the sheriff of a county may issue a license to that person upon proof of all of the following:

(1) The applicant is of good moral character.

(2) Good cause exists for issuance of the license.

(3) The applicant is a resident of the county or a city within the county, or the applicant s principal place of employment or business is in the county or a city within the county and the applicant spends a substantial period of time in that place of employment or business.

(4) The applicant has completed a course of training as described in Section 26165.

(b) The sheriff may issue a license under subdivision (a) in either of the following formats:

(1) A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Where the population of the county is less than 200,000 persons according to the most recent federal decennial census, a license to carry loaded and exposed in only that county a pistol, revolver, or other firearm capable of being concealed upon the person.

(c) (1) Nothing in this chapter shall preclude the sheriff of the county from entering into an agreement with the chief or other head of a municipal police department of a city to process all applications for licenses, renewals of licenses, or amendments to licenses pursuant to this chapter, in lieu of the sheriff.

(2) This subdivision shall only apply to applicants who reside within the city in which the chief or other head of the municipal police department has agreed to process applications for licenses, renewals of licenses, and amendments to licenses, pursuant to this chapter.

Cal. Penal Code § 26155

(a) When a person applies for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person, the chief or other head of a municipal police department of any city or city and county may issue a license to that person upon proof of all of the following:

(1) The applicant is of good moral character.

(2) Good cause exists for issuance of the license.

(3) The applicant is a resident of that city.

(4) The applicant has completed a course of training as described in Section 26165.

(b) The chief or other head of a municipal police department may issue a license under subdivision (a) in either of the following formats:

(1) A license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Where the population of the county in which the city is located is less than 200,000 persons according to the most recent federal decennial census, a license to carry loaded and exposed in only that county a pistol, revolver, or other firearm capable of being concealed upon the person.

(c) Nothing in this chapter shall preclude the chief or other head of a municipal police department of any city from entering an agreement with the sheriff of the county in which the city is located for the sheriff to process all applications for licenses, renewals of licenses, and amendments to licenses, pursuant to this chapter.

(d) The applicant shall not be required to pay for any training courses prior to the determination of good cause being made pursuant to Section 26202 .

Cal. Penal Code § 26160

Each licensing authority shall publish and make available a written policy summarizing the provisions of Section 26150 and subdivisions (a) and (b) of Section 26155.

Cal. Penal Code § 26165

(a) For new license applicants, the course of training for issuance of a license under Section 26150 or 26155may be any course acceptable to the licensing authority, shall not exceed 16 hours, and shall include instruction on at least firearm safety and the law regarding the permissible use of a firearm.

(b) Notwithstanding subdivision (a), the licensing authority may require a community college course certified by the Commission on Peace Officer Standards and Training, up to a maximum of 24 hours, but only if required uniformly of all license applicants without exception.

(c) For license renewal applicants, the course of training may be any course acceptable to the licensing authority, shall be no less than four hours, and shall include instruction on at least firearm safety and the law regarding the permissible use of a firearm. No course of training shall be required for any person certified by the licensing authority as a trainer for purposes of this section, in order for that person to renew a license issued pursuant to this article.

Cal. Penal Code § 26170

(a) Upon proof of all of the following, the sheriff of a county, or the chief or other head of a municipal police department of any city or city and county, may issue to an applicant a license to carry concealed a pistol, revolver, or other firearm capable of being concealed upon the person:

(1) The applicant is of good moral character.

(2) Good cause exists for issuance of the license.

(3) The applicant has been deputized or appointed as a peace officer pursuant to subdivision (a) or (b) of Section 830.6 by that sheriff or that chief of police or other head of a municipal police department.

(b) Direct or indirect fees for the issuance of a license pursuant to this section may be waived.

(c) The fact that an applicant for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person has been deputized or appointed as a peace officer pursuant to subdivision (a)or (b) of Section 830.6 shall be considered only for the purpose of issuing a license pursuant to this section, and shall not be considered for the purpose of issuing a license pursuant to Section 26150 or 26155 .

Cal. Penal Code § 26175

(a)(1) Applications for licenses and applications for amendments to licenses under this article shall be uniform throughout the state, upon forms to be prescribed by the Attorney General.

(2) The Attorney General shall convene a committee composed of one representative of the California State Sheriffs' Association, one representative of the California Police Chiefs Association, and one representative of the Department of Justice to review, and, as deemed appropriate, revise the standard application form for licenses. The committee shall meet for this purpose if two of the committee's members deem that necessary.

(3)(A) The Attorney General shall develop a uniform license that may be used as indicia of proof of licensure throughout the state.

(B) The Attorney General shall approve the use of licenses issued by local agencies that contain all the information required in subdivision (i), including a recent photograph of the applicant, and are deemed to be in substantial compliance with standards developed by the committee described in subparagraph (C), if developed, as they relate to the physical dimensions and general appearance of the licenses. The Attorney General shall retain exemplars of approved licenses and shall maintain a

list of agencies issuing local licenses. Approved licenses may be used as indicia of proof of licensure under this chapter in lieu of the uniform license developed by the Attorney General.

(C) A committee composed of two representatives of the California State Sheriffs' Association, two representatives of the California Police Chiefs Association, and one representative of the Department of Justice shall convene to review and revise, as the committee deems appropriate, the design standard for licenses issued by local agencies that may be used as indicia of proof of licensure throughout the state, provided that the design standard meets the requirements of subparagraph (B). The committee shall meet for this purpose if two of the committee's members deem it necessary.

(b) The application shall include a section summarizing the requirements of state law that result in the automatic denial of a license.

(c) The standard application form for licenses described in subdivision (a) shall require information from the applicant, including, but not limited to, the name, occupation, residence, and business address of the applicant, the applicant's age, height, weight, color of eyes and hair, and reason for desiring a license to carry the weapon.

(d) Applications for licenses shall be filed in writing and signed by the applicant.

(e) Applications for amendments to licenses shall be filed in writing and signed by the applicant, and shall state what type of amendment is sought pursuant to Section 26215 and the reason for desiring the amendment.

(f) The forms shall contain a provision whereby the applicant attests to the truth of statements contained in the application.

(g) An applicant shall not be required to complete any additional application or form for a license, or to provide any information other than that necessary to complete the standard application form described in subdivision (a), except to clarify or interpret information provided by the applicant on the standard application form.

(h) The standard application form described in subdivision (a) is deemed to be a local form expressly exempt from the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(i) Any license issued upon the application shall set forth the licensee's name, occupation, residence and business address, the licensee's age, height, weight, color of eyes and hair, and the reason for desiring a license to carry the weapon, and shall, in addition, contain a description of the weapon or weapons authorized to be carried, giving the name of the manufacturer, the serial number, and the caliber. The license issued to the licensee may be laminated.

Cal. Penal Code § 26180

(a)(1) Applications for licenses and applications for amendments to licenses under this article shall be uniform throughout the state, upon forms to be prescribed by the Attorney General.

(2) The Attorney General shall convene a committee composed of one representative of the California State Sheriffs' Association, one representative of the California Police Chiefs Association, and one representative of the Department of Justice to review, and, as deemed appropriate, revise the standard application form for licenses. The committee shall meet for this purpose if two of the committee's members deem that necessary.

(3)(A) The Attorney General shall develop a uniform license that may be used as indicia of proof of licensure throughout the state.

(B) The Attorney General shall approve the use of licenses issued by local agencies that contain all the information required in subdivision (i), including a recent photograph of the applicant, and are deemed to be in substantial compliance with standards developed by the committee described in subparagraph (C), if developed, as they relate to the physical dimensions and general appearance of the licenses. The Attorney General shall retain exemplars of approved licenses and shall maintain a list of agencies issuing local licenses. Approved licenses may be used as indicia of proof of licensure under this chapter in lieu of the uniform license developed by the Attorney General.

(C) A committee composed of two representatives of the California State Sheriffs' Association, two representatives of the California Police Chiefs Association, and one representative of the Department of Justice shall convene to review and revise, as the committee deems appropriate, the design standard for licenses issued by local agencies that may be used as indicia of proof of licensure throughout the state, provided that the design standard meets the requirements of subparagraph (B). The committee shall meet for this purpose if two of the committee's members deem it necessary.

(b) The application shall include a section summarizing the requirements of state law that result in the automatic denial of a license.

(c) The standard application form for licenses described in subdivision (a) shall require information from the applicant, including, but not limited to, the name, occupation, residence, and business address of the applicant, the applicant's age, height, weight, color of eyes and hair, and reason for desiring a license to carry the weapon.

(d) Applications for licenses shall be filed in writing and signed by the applicant.

(e) Applications for amendments to licenses shall be filed in writing and signed by the applicant, and shall state what type of amendment is sought pursuant to Section 26215 and the reason for desiring the amendment.

(f) The forms shall contain a provision whereby the applicant attests to the truth of statements contained in the application.

(g) An applicant shall not be required to complete any additional application or form for a license, or to provide any information other than that necessary to complete the standard application form described in subdivision (a), except to clarify or interpret information provided by the applicant on the standard application form.

(h) The standard application form described in subdivision (a) is deemed to be a local form expressly exempt from the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(i) Any license issued upon the application shall set forth the licensee's name, occupation, residence and business address, the licensee's age, height, weight, color of eyes and hair, and the reason for desiring a license to carry the weapon, and shall, in addition, contain a description of the weapon or weapons authorized to be carried, giving the name of the manufacturer, the serial number, and the caliber. The license issued to the licensee may be laminated.

Cal. Penal Code § 26185

(a)(1) The fingerprints of each applicant shall be taken and two copies on forms prescribed by the Department of Justice shall be forwarded to the department.

(2) Upon receipt of the fingerprints and the fee as prescribed in Section 26190 , the department shall promptly furnish the forwarding licensing authority a report of all data and information pertaining to any applicant of which there is a record in its office, including information as to whether the person is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(3) No license shall be issued by any licensing authority until after receipt of the report from the department.

(b) Notwithstanding subdivision (a), if the license applicant has previously applied to the same licensing authority for a license to carry firearms pursuant to this article and the applicant's fingerprints and fee have been previously forwarded to the Department of Justice, as provided by this section, the licensing authority shall note the previous identification numbers and other data that would provide positive identification in the files of the Department of Justice on the copy of any subsequent license submitted to the department in conformance with Section 26225 and no additional application form or fingerprints shall be required.

(c) If the license applicant has a license issued pursuant to this article and the applicant's fingerprints have been previously forwarded to the Department of Justice, as provided in this section, the licensing authority shall note the previous identification numbers and other data that would provide positive identification in the files of the Department of Justice on the copy of any subsequent license submitted to the department in conformance with Section 26225 and no additional fingerprints shall be required.

Cal. Penal Code § 26190

(a)(1) Each applicant for a new license or for the renewal of a license shall pay at the time of filing the application a fee determined by the Department of Justice. The fee shall not exceed the application processing costs of the Department of Justice for the direct costs of furnishing the report required by Section 26185 .

(2) After the department establishes fees sufficient to reimburse the department for processing costs, fees charged shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustments for the department's budget.

(3) The officer receiving the application and the fee shall transmit the fee, with the fingerprints if required, to the Department of Justice.

(b)(1) The licensing authority of any city, city and county, or county may charge an additional fee in an amount equal to the actual costs for processing the application for a new license, including any required notices, excluding fingerprint and training costs, but in no case to exceed one hundred dollars ($100), and shall transmit the additional fee, if any, to the city, city and county, or county treasury.

(2) The first 20 percent of this additional local fee may be collected upon filing of the initial application. The balance of the fee shall be collected only upon issuance of the license.

(c) The licensing authority may charge an additional fee, not to exceed twenty-five dollars ($25), for processing the application for a license renewal, and shall transmit an additional fee, if any, to the city, city and county, or county treasury.

(d) These local fees may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations.

(e)(1) In the case of an amended license pursuant to Section 26215 , the licensing authority of any city, city and county, or county may charge a fee, not to exceed ten dollars ($10), for processing the amended license.

(2) This fee may be increased at a rate not to exceed any increase in the California Consumer Price Index as compiled and reported by the Department of Industrial Relations.

(3) The licensing authority shall transmit the fee to the city, city and county, or county treasury.

(f)(1) If psychological testing on the initial application is required by the licensing authority, the license applicant shall be referred to a licensed psychologist used by the licensing authority for the psychological testing of its own employees. The applicant may be charged for the actual cost of the testing in an amount not to exceed one hundred fifty dollars ($150).

(2) Additional psychological testing of an applicant seeking license renewal shall be required only if there is compelling evidence to indicate that a test is necessary. The cost to the applicant for this additional testing shall not exceed one hundred fifty dollars ($150).

(g) Except as authorized pursuant to this section, no requirement, charge, assessment, fee, or condition that requires the payment of any additional funds by the applicant, or requires the applicant to obtain liability insurance, may be imposed by any licensing authority as a condition of the application for a license.

Cal. Penal Code § 26195

(a) A license under this article shall not be issued if the Department of Justice determines that the person is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(b)(1) A license under this article shall be revoked by the local licensing authority if at any time either the local licensing authority is notified by the Department of Justice that a licensee is prohibited by state or federal law from owning or purchasing firearms, or the local licensing authority determines that the person is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(2) If at any time the Department of Justice determines that a licensee is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, the department shall immediately notify the local licensing authority of the determination.

(3) If the local licensing authority revokes the license, the Department of Justice shall be notified of the revocation pursuant to Section 26225 . The licensee shall also be immediately notified of the revocation in writing.

Cal. Penal Code § 26200

(a) A license issued pursuant to this article may include any reasonable restrictions or conditions that the issuing authority deems warranted, including restrictions as to the time, place, manner, and circumstances under which the licensee may carry a pistol, revolver, or other firearm capable of being concealed upon the person.

(b) Any restrictions imposed pursuant to subdivision (a) shall be indicated on any license issued.

Cal. Penal Code § 26202

Upon making the determination of good cause pursuant to Section 26150 or 26155 , the licensing authority shall give written notice to the applicant of the licensing authority's determination. If the licensing authority determines that good cause exists, the notice shall inform the applicants to proceed with the training requirements specified in Section 26165 . If the licensing authority determines that good cause does not exist, the notice shall inform the applicant that the request for a license has been denied and shall state the reason from the department's published policy, described in Section 26160 , as to why the determination was made.

Cal. Penal Code § 26205

The licensing authority shall give written notice to the applicant indicating if the license under this article is approved or denied. The licensing authority shall give this notice within 90 days of the initial application for a new license or a license renewal, or 30 days after receipt of the applicant's criminal background check from the Department of Justice, whichever is later. If the license is denied, the notice shall state which requirement was not satisfied.

Cal. Penal Code § 26210

(a) When a licensee under this article has a change of address, the license shall be amended to reflect the new address and a new license shall be issued pursuant to subdivision (b) of Section 26215 .

(b) The licensee shall notify the licensing authority in writing within 10 days of any change in the licensee's place of residence.

(c) If both of the following conditions are satisfied, a license to carry a concealed handgun may not be revoked solely because the licensee's place of residence has changed to another county:

(1) The licensee has not breached any of the conditions or restrictions set forth in the license.

(2) The licensee has not become prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(d) Notwithstanding subdivision (c), if a licensee's place of residence was the basis for issuance of a license, any license issued pursuant to Section 26150 or 26155 shall expire 90 days after the licensee moves from the county of issuance.

(e) If the license is one to carry loaded and exposed a pistol, revolver, or other firearm capable of being concealed upon the person, the license shall be revoked immediately upon a change of the licensee's place of residence to another county.

Cal. Penal Code § 26215

(a) When a licensee under this article has a change of address, the license shall be amended to reflect the new address and a new license shall be issued pursuant to subdivision (b) of Section 26215 .

(b) The licensee shall notify the licensing authority in writing within 10 days of any change in the licensee's place of residence.

(c) If both of the following conditions are satisfied, a license to carry a concealed handgun may not be revoked solely because the licensee's place of residence has changed to another county:

(1) The licensee has not breached any of the conditions or restrictions set forth in the license.

(2) The licensee has not become prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(d) Notwithstanding subdivision (c), if a licensee's place of residence was the basis for issuance of a license, any license issued pursuant to Section 26150 or 26155 shall expire 90 days after the licensee moves from the county of issuance.

(e) If the license is one to carry loaded and exposed a pistol, revolver, or other firearm capable of being concealed upon the person, the license shall be revoked immediately upon a change of the licensee's place of residence to another county.

Cal. Penal Code § 26220

(a) Except as otherwise provided in this section and in subdivision (c) of Section 26210 , a license issued pursuant to Section 26150 or 26155 is valid for any period of time not to exceed two years from the date of the license.

(b) If the licensee's place of employment or business was the basis for issuance of a license pursuant to Section 26150 , the license is valid for any period of time not to exceed 90 days from the date of the license. The license shall be valid only in the county in which the license was originally issued. The licensee shall give a copy of this license to the licensing authority of the city, county, or city and county in which the licensee resides. The licensing authority that originally issued the license shall inform the licensee verbally and in writing in at least 16-point type of this obligation to give a copy of the license to the licensing authority of the city, county, or city and county of residence. Any application to renew or extend the validity of, or reissue, the license may be granted only upon the concurrence of the licensing authority that originally issued the license and the licensing authority of the city, county, or city and county in which the licensee resides.

(c) A license issued pursuant to Section 26150 or 26155 is valid for any period of time not to exceed three years from the date of the license if the license is issued to any of the following individuals:

(1) A judge of a California court of record.

(2) A full-time court commissioner of a California court of record.

(3) A judge of a federal court.

(4) A magistrate of a federal court.

(d) A license issued pursuant to Section 26150 or 26155 is valid for any period of time not to exceed four years from the date of the license if the license is issued to a custodial officer who is an employee of the sheriff as provided in Section 831.5 , except that the license shall be invalid upon the conclusion of the person's employment pursuant to Section 831.5 if the four-year period has not otherwise expired or any other condition imposed pursuant to this article does not limit the validity of the license to a shorter time period.

(e) A license issued pursuant to Section 26170 to a peace officer appointed pursuant to Section 830.6 is valid for any period of time not to exceed four years from the date of the license, except that the license shall be invalid upon the conclusion of the person's appointment pursuant to Section 830.6 if the four-year period has not otherwise expired or any other condition imposed pursuant to this article does not limit the validity of the license to a shorter time period.

Cal. Penal Code § 26225

(a) A record of the following shall be maintained in the office of the licensing authority:

(1) The denial of a license.

(2) The denial of an amendment to a license.

(3) The issuance of a license.

(4) The amendment of a license.

(5) The revocation of a license.

(b) Copies of each of the following shall be filed immediately by the issuing officer or authority with the Department of Justice:

(1) The denial of a license.

(2) The denial of an amendment to a license.

(3) The issuance of a license.

(4) The amendment of a license.

(5) The revocation of a license.

(c)(1) Commencing on or before January 1, 2000, and annually thereafter, each licensing authority shall submit to the Attorney General the total number of licenses issued to peace officers pursuant to Section 26170 , and to judges pursuant to Section 26150 or 26155 .

(2) The Attorney General shall collect and record the information submitted pursuant to this subdivision by county and licensing authority.

Cal. Penal Code § 26300

(a) Any peace officer listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 who retired prior to January 1, 1981, is authorized to carry a concealed and loaded firearm if the agency issued the officer an identification certificate and the certificate has not been stamped as specified in Section 25470 .

(b) Any peace officer employed by an agency and listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 who retired after January 1, 1981, shall have an endorsement on the officer's identification certificate stating that the issuing agency approves the officer's carrying of a concealed and loaded firearm.

(c)(1) Any peace officer not listed in subdivision (a) or (b) who was authorized to, and did, carry a firearm during the course and scope of his or her appointment as a peace officer shall have an endorsement on the officer's identification certificate stating that the issuing agency approves the officer's carrying of a concealed and loaded firearm.

(2) This subdivision applies to a retired reserve officer if the retired reserve officer satisfies the requirements of paragraph (1), was a level I reserve officer as described in paragraph (1) of

subdivision (a) of Section 832.6 , and he or she served in the aggregate the minimum amount of time as specified by the retiree's agency's policy as a level I reserve officer, provided that the policy shall not set an aggregate term requirement that is less than 10 years or more than 20 years. Service as a reserve officer, other than a level I reserve officer prior to January 1, 1997, shall not count toward the accrual of time required by this section. A law enforcement agency shall have the discretion to revoke or deny an endorsement issued under this subdivision pursuant to Section 26305

Cal. Penal Code § 26305

(a) No peace officer who is retired after January 1, 1989, because of a psychological disability shall be issued an endorsement to carry a concealed and loaded firearm pursuant to this article.

(b) A retired peace officer may have the privilege to carry a concealed and loaded firearm revoked or denied by violating any departmental rule, or state or federal law that, if violated by an officer on active duty, would result in that officer's arrest, suspension, or removal from the agency.

(c) An identification certificate authorizing the officer to carry a concealed and loaded firearm or an endorsement on the certificate may be immediately and temporarily revoked by the issuing agency when the conduct of a retired peace officer compromises public safety.

(d) An identification certificate authorizing the officer to carry a concealed and loaded firearm or an endorsement may be permanently revoked or denied by the issuing agency only upon a showing of good cause. Good cause shall be determined at a hearing, as specified in Section 26320 .

Cal. Penal Code § 26310

(a) Issuance of an identification certificate authorizing the officer to carry a concealed and loaded firearm or an endorsement may be denied prior to a hearing.

(b) If a hearing is not conducted prior to the denial of an endorsement, a retired peace officer, within 15 days of the denial, shall have the right to request a hearing. A retired peace officer who fails to request a hearing pursuant to this section shall forfeit the right to a hearing.

Cal. Penal Code § 26312

(a) Notice of a temporary revocation shall be effective upon personal service or upon receipt of a notice that was sent by first-class mail, postage prepaid, return receipt requested, to the retiree's last known place of residence.

(b) The retiree shall have 15 days to respond to the notification and request a hearing to determine if the temporary revocation should become permanent.

(c) A retired peace officer who fails to respond to the notice of hearing within the 15-day period shall forfeit the right to a hearing and the authority of the officer to carry a firearm shall be permanently revoked. The retired officer shall immediately return the identification certificate to the issuing agency.

(d) If a hearing is requested, good cause for permanent revocation shall be determined at a hearing, as specified in Section 26320 . The hearing shall be held no later than 120 days after the request by the retired officer for a hearing is received.

(e) A retiree may waive the right to a hearing and immediately return the identification certificate to the issuing agency.

Cal. Penal Code § 26315

(a) An identification certificate authorizing the officer to carry a concealed and loaded firearm or an endorsement may be permanently revoked only after a hearing, as specified in Section 26320 .

(b) Any retired peace officer whose identification certificate authorizing the officer to carry a concealed and loaded firearm or an endorsement is to be revoked shall receive notice of the hearing. Notice of the hearing shall be served either personally on the retiree or sent by first-class mail, postage prepaid, return receipt requested to the retiree's last known place of residence.

(c) From the date the retiree signs for the notice or upon the date the notice is served personally on the retiree, the retiree shall have 15 days to respond to the notification. A retired peace officer who fails to respond to the notice of the hearing shall forfeit the right to a hearing and the authority of the officer to carry a firearm shall be permanently revoked. The retired officer shall immediately return the identification certificate to the issuing agency.

(d) If a hearing is requested, good cause for permanent revocation shall be determined at the hearing, as specified in Section 26320 . The hearing shall be held no later than 120 days after the request by the retired officer for a hearing is received.

(e) The retiree may waive the right to a hearing and immediately return the identification certificate to the issuing agency.

Cal. Penal Code § 26320

(a) Any hearing conducted under this article shall be held before a three-member hearing board. One member of the board shall be selected by the agency and one member shall be selected by the retired peace officer or his or her employee organization. The third member shall be selected jointly by the agency and the retired peace officer or his or her employee organization.

(b) Any decision by the board shall be binding on the agency and the retired peace officer.

Cal. Penal Code § 26325

(a) A retired peace officer, when notified of the revocation of the privilege to carry a concealed and loaded firearm, after the hearing, or upon forfeiting the right to a hearing, shall immediately surrender to the issuing agency the officer's identification certificate.

(b) The issuing agency shall reissue a new identification certificate without an endorsement.

(c) Notwithstanding subdivision (b), if the peace officer retired prior to January 1, 1981, and was at the time of retirement a peace officer listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 , the issuing agency shall stamp on the identification certificate "No CCW privilege."

Cal. Penal Code § 26350

(a) A retired peace officer, when notified of the revocation of the privilege to carry a concealed and loaded firearm, after the hearing, or upon forfeiting the right to a hearing, shall immediately surrender to the issuing agency the officer's identification certificate.

(b) The issuing agency shall reissue a new identification certificate without an endorsement.

(c) Notwithstanding subdivision (b), if the peace officer retired prior to January 1, 1981, and was at the time of retirement a peace officer listed in Section 830.1 or 830.2 or subdivision (c) of Section 830.5 , the issuing agency shall stamp on the identification certificate "No CCW privilege."

Cal. Penal Code § 26361

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by any peace officer or any honorably retired peace officer if that officer may carry a concealed firearm pursuant to Article 2 (commencing with Section 25450) of Chapter 2, or a loaded firearm pursuant to Article 3 (commencing with Section 25900) of Chapter 3.

Cal. Penal Code § 26362

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by any person to the extent that person may openly carry a loaded handgun pursuant to Article 4 (commencing with Section 26000) of Chapter 3.

Cal. Penal Code § 26363

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun as merchandise by a person who is engaged in the business of manufacturing, importing, wholesaling, repairing, or dealing in firearms and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while engaged in the lawful course of the business.

Cal. Penal Code § 26364

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a duly authorized military or civil organization, or the members thereof, while parading or while rehearsing or practicing parading, when at the meeting place of the organization.

Cal. Penal Code § 26365

Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a member of any club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the

members are using handguns upon the target ranges or incident to the use of a handgun at that target range.

Cal. Penal Code § 26366

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a licensed hunter while engaged in hunting or while transporting that handgun when going to or returning from that hunting expedition.

Cal. Penal Code § 26366.5

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.

Cal. Penal Code § 26367

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to transportation of a handgun by a person operating a licensed common carrier, or by an authorized agent or employee thereof, when transported in conformance with applicable federal law.

Cal. Penal Code § 26368

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a member of an organization chartered by the Congress of the United States or a nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while on official parade duty or ceremonial occasions of that organization or while rehearsing or practicing for official parade duty or ceremonial occasions.

Cal. Penal Code § 26369

Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun within a gun show conducted pursuant to Article 1 (commencing with Section 27200) and Article 2 (commencing with Section 27300) of Chapter 3 of Division 6.

Cal. Penal Code § 26370

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun within a school zone, as defined in Section 626.9 , if that carrying is not prohibited by Section 626.9 .

Cal. Penal Code § 26371

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun when in accordance with the provisions of Section 171b .

Cal. Penal Code § 26372

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by any person while engaged in the act of making or attempting to make a lawful arrest.

Cal. Penal Code § 26373

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to loaning, selling, or transferring that handgun in accordance with Article 1 (commencing with Section 27500) of Chapter 4 of Division 6, or in accordance with any of the exemptions from Section 27545 , so long as that handgun is possessed within private property and the possession and carrying is with the permission of the owner or lessee of that private property.

Cal. Penal Code § 26374

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a person engaged in firearms-related activities, while on the premises of a fixed place of business that is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training.

Cal. Penal Code § 26375

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television or video production, or entertainment event, when the participant lawfully uses the handgun as part of that production or event, as part of rehearsing or practicing for participation in that production or event, or while the participant or authorized employee or agent is at that production or event, or rehearsal or practice for that production or event.

Cal. Penal Code § 26376

Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to obtaining an identification number or mark assigned for that handgun from the Department of Justice pursuant to Section 23910.

Cal. Penal Code § 26377

Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun at any established target range, whether public or private, while the person is using the handgun upon the target range.

Cal. Penal Code § 26378

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace, while the person is actually engaged in assisting that officer.

Cal. Penal Code § 26379

Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to any of the following:

(a) Complying with Section 27560 or 27565 , as it pertains to that handgun.

(b) Section 28000 , as it pertains to that handgun.

(c) Section 27850 or 31725 , as it pertains to that handgun.

(d) Complying with Section 27870 or 27875 , as it pertains to that handgun.

(e) Complying with Section 27915 , 27920 , or 27925 , as it pertains to that handgun.

Cal. Penal Code § 26380

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to, and in the course and scope of, training of or by an individual to become a sworn peace officer as part of a course of study approved by the Commission on Peace Officer Standards and Training.

Cal. Penal Code § 26381

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to, and in the course and scope of, training of or by an individual to become licensed pursuant to Chapter 4 (commencing with Section 26150) as part of a course of study necessary or authorized by the person authorized to issue the license pursuant to that chapter.

Cal. Penal Code § 26382

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun incident to and at the request of a sheriff or chief or other head of a municipal police department.

Cal. Penal Code § 26383

Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by a person when done within a place of business, a place of residence, or on private property, if done with the permission of a person who, by virtue of subdivision (a) of Section 25605 , may carry openly an unloaded handgun within that place of business, place of residence, or on that private property owned or lawfully possessed by that person.

Cal. Penal Code § 26384

Paragraph (1) of subdivision (a) of Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun if all of the following conditions are satisfied:

(a) The open carrying occurs at an auction or similar event of a nonprofit public benefit or mutual benefit corporation, at which firearms are auctioned or otherwise sold to fund the activities of that corporation or the local chapters of that corporation.

(b) The unloaded handgun is to be auctioned or otherwise sold for that nonprofit public benefit or mutual benefit corporation.

(c) The unloaded handgun is to be delivered by a person licensed pursuant to, and operating in accordance with, Sections 26700 to 26915 , inclusive.

Cal. Penal Code § 26385

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun pursuant to paragraph (3) of subdivision (b) of Section 171c.

Cal. Penal Code § 26386

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun pursuant to Section 171d.

Cal. Penal Code § 26387

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun pursuant to subparagraph (F) of paragraph (1) subdivision (c) of Section 171.7.

Cal. Penal Code § 26388

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun on publicly owned land, if the possession and use of a handgun is specifically permitted by the managing agency of the land and the person carrying that handgun is in lawful possession of that handgun.

Cal. Penal Code § 26389

Section 26350 does not apply to, or affect, the carrying of an unloaded handgun if the handgun is carried either in the locked trunk of a motor vehicle or in a locked container.

Cal. Penal Code § 26390

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun in any of the following circumstances:

(a) The open carrying of an unloaded handgun that is regulated pursuant to Chapter 1 (commencing with Section 18710) of Division 5 of Title 2 by a person who holds a permit issued pursuant to Article 3 (commencing with Section 18900) of that chapter, if the carrying of that handgun is conducted in accordance with the terms and conditions of the permit.

(b) The open carrying of an unloaded handgun that is regulated pursuant to Chapter 2 (commencing with Section 30500) of Division 10 by a person who holds a permit issued pursuant

to Section 31005 , if the carrying of that handgun is conducted in accordance with the terms and conditions of the permit.

(c) The open carrying of an unloaded handgun that is regulated pursuant to Chapter 6 (commencing with Section 32610) of Division 10 by a person who holds a permit issued pursuant to Section 32650 , if the carrying is conducted in accordance with the terms and conditions of the permit.

(d) The open carrying of an unloaded handgun that is regulated pursuant to Article 2 (commencing with Section 33300) of Chapter 8 of Division 10 by a person who holds a permit issued pursuant to Section 33300 , if the carrying of that handgun is conducted in accordance with the terms and conditions of the permit.

Cal. Penal Code § 26391

Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun when done in accordance with the provisions of subdivision (d) of Section 171.5.

Cal. Penal Code § 26400

(a) A person is guilty of carrying an unloaded firearm that is not a handgun when that person carries upon his or her person an unloaded firearm that is not a handgun outside a vehicle while in any of the following areas:

(1) An incorporated city or city and county.

(2) A public place or a public street in a prohibited area of an unincorporated area of a county.

(b)(1) Except as specified in paragraph (2), a violation of this section is a misdemeanor.

(2) A violation of subdivision (a) is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment, if the firearm and unexpended ammunition capable of being discharged from that firearm are in the immediate possession of the person and the person is not in lawful possession of that firearm.

(c)(1) Nothing in this section shall preclude prosecution under Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9, Section 8100 or 8103 of the Welfare and Institutions Code , or any other law with a penalty greater than is set forth in this section.

(2) The provisions of this section are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by different provisions of law shall not be punished under more than one provision.

(d) Notwithstanding the fact that the term "an unloaded firearm that is not a handgun" is used in this section, each individual firearm shall constitute a distinct and separate offense under this section.

Cal. Penal Code § 26405

Section 26400 does not apply to, or affect, the carrying of an unloaded firearm that is not a handgun in any of the following circumstances:

(a) By a person when carried within a place of business, a place of residence, or on private real property, if that person, by virtue of subdivision (a) of Section 25605 , may carry a firearm within that place of business, place of residence, or on that private real property owned or lawfully occupied by that person.

(b) By a person when carried within a place of business, a place of residence, or on private real property, if done with the permission of a person who, by virtue of subdivision (a) of Section 25605 , may carry a firearm within that place of business, place of residence, or on that private real property owned or lawfully occupied by that person.

(c) When the firearm is either in a locked container or encased and it is being transported directly between places where a person is not prohibited from possessing that firearm and the course of travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

(d) If the person possessing the firearm reasonably believes that he or she is in grave danger because of circumstances forming the basis of a current restraining order issued by a court against another person or persons who has or have been found to pose a threat to his or her life or safety. This subdivision may not apply when the circumstances involve a mutual restraining order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code absent a factual finding of a specific threat to the person's life or safety. Upon a trial for violating Section 26400 , the trier of fact shall determine whether the defendant was acting out of a reasonable belief that he or she was in grave danger.

(e) By a peace officer or an honorably retired peace officer if that officer may carry a concealed firearm pursuant to Article 2 (commencing with Section 25450) of Chapter 2, or a loaded firearm pursuant to Article 3 (commencing with Section 25900) of Chapter 3.

(f) By a person to the extent that person may openly carry a loaded firearm that is not a handgun pursuant to Article 4 (commencing with Section 26000) of Chapter 3.

(g) As merchandise by a person who is engaged in the business of manufacturing, importing, wholesaling, repairing, or dealing in firearms and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while engaged in the lawful course of the business.

(h) By a duly authorized military or civil organization, or the members thereof, while parading or while rehearsing or practicing parading, when at the meeting place of the organization.

(i) By a member of a club or organization organized for the purpose of practicing shooting at targets upon established target ranges, whether public or private, while the members are using

firearms that are not handguns upon the target ranges or incident to the use of a firearm that is not a handgun at that target range.

(j) By a licensed hunter while engaged in hunting or while transporting that firearm when going to or returning from that hunting expedition.

(k) Incident to transportation of a handgun by a person operating a licensed common carrier, or by an authorized agent or employee thereof, when transported in conformance with applicable federal law.

(*l*) By a member of an organization chartered by the Congress of the United States or a nonprofit mutual or public benefit corporation organized and recognized as a nonprofit tax-exempt organization by the Internal Revenue Service while on official parade duty or ceremonial occasions of that organization or while rehearsing or practicing for official parade duty or ceremonial occasions.

(m) Within a gun show conducted pursuant to Article 1 (commencing with Section 27200) and Article 2 (commencing with Section 27300) of Chapter 3 of Division 6.

(n) Within a school zone, as defined in Section 626.9 , if that carrying is not prohibited by Section 626.9 .

(*o*) When in accordance with the provisions of Section 171b .

(p) By a person while engaged in the act of making or attempting to make a lawful arrest.

(q) By a person engaged in firearms-related activities, while on the premises of a fixed place of business that is licensed to conduct and conducts, as a regular course of its business, activities related to the sale, making, repair, transfer, pawn, or the use of firearms, or related to firearms training.

(r) By an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television, or video production or entertainment event, when the participant lawfully uses that firearm as part of that production or event, as part of rehearsing or practicing for participation in that production or event, or while the participant or authorized employee or agent is at that production or event, or rehearsal or practice for that production or event.

(s) Incident to obtaining an identification number or mark assigned for that firearm from the Department of Justice pursuant to Section 23910 .

(t) At an established public target range while the person is using that firearm upon that target range.

(u) By a person when that person is summoned by a peace officer to assist in making arrests or preserving the peace, while the person is actually engaged in assisting that officer.

(v) Incident to any of the following:

(1) Complying with Section 27560 or 27565 , as it pertains to that firearm.

(2) Section 28000 , as it pertains to that firearm.

(3) Section 27850 or 31725 , as it pertains to that firearm.

(4) Complying with Section 27870 or 27875 , as it pertains to that firearm.

(5) Complying with Section 27915 , 27920 , or 27925 , as it pertains to that firearm.

(w) Incident to, and in the course and scope of, training of, or by an individual to become a sworn peace officer as part of a course of study approved by the Commission on Peace Officer Standards and Training.

(x) Incident to, and in the course and scope of, training of, or by an individual to become licensed pursuant to Chapter 4 (commencing with Section 26150) as part of a course of study necessary or authorized by the person authorized to issue the license pursuant to that chapter.

(y) Incident to and at the request of a sheriff, chief, or other head of a municipal police department.

(z) If all of the following conditions are satisfied:

(1) The open carrying occurs at an auction or similar event of a nonprofit public benefit or mutual benefit corporation at which firearms are auctioned or otherwise sold to fund the activities of that corporation or the local chapters of that corporation.

(2) The unloaded firearm that is not a handgun is to be auctioned or otherwise sold for that nonprofit public benefit or mutual benefit corporation.

(3) The unloaded firearm that is not a handgun is to be delivered by a person licensed pursuant to, and operating in accordance with, Sections 26700 to 26915 , inclusive.

(aa) Pursuant to paragraph (3) of subdivision (b) of Section 171c .

(ab) Pursuant to Section 171d .

(ac) Pursuant to subparagraph (F) of paragraph (1) of subdivision (c) of Section 171.7 .

(ad) On publicly owned land, if the possession and use of an unloaded firearm that is not a handgun is specifically permitted by the managing agency of the land and the person carrying that firearm is in lawful possession of that firearm.

(ae) By any of the following:

(1) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Chapter 1 (commencing with Section 18710) of Division 5 of Title 2 by a person who holds a permit issued

pursuant to Article 3 (commencing with Section 18900) of that chapter, if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(2) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Chapter 2 (commencing with Section 30500) of Division 10 by a person who holds a permit issued pursuant to Section 31005 , if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(3) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Chapter 6 (commencing with Section 32610) of Division 10 by a person who holds a permit issued pursuant to Section 32650 , if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(4) The carrying of an unloaded firearm that is not a handgun that is regulated pursuant to Article 2 (commencing with Section 33300) of Chapter 8 of Division 10 by a person who holds a permit issued pursuant to Section 33300 , if the carrying of that firearm is conducted in accordance with the terms and conditions of the permit.

(af) By a licensed hunter while actually engaged in training a dog for the purpose of using the dog in hunting that is not prohibited by law, or while transporting the firearm while going to or returning from that training.

(ag) Pursuant to the provisions of subdivision (d) of Section 171.5 .

(ah) By a person who is engaged in the business of manufacturing ammunition and who is licensed to engage in that business, or the authorized representative or authorized agent of that person, while the firearm is being used in the lawful course and scope of the licensee's activities as a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and regulations issued pursuant thereto.

(ai) On the navigable waters of this state that are held in public trust, if the possession and use of an unloaded firearm that is not a handgun is not prohibited by the managing agency thereof and the person carrying the firearm is in lawful possession of the firearm.

36 C.F.R. 261.10(d)

The following are prohibited:

. . . .

(d) Discharging a firearm or any other implement capable of taking human life, causing injury, or damaging property as follows:

(1) In or within 150 yards of a residence, building, campsite, developed recreation site or occupied area, or

(2) Across or on a National Forest System road or a body of water adjacent thereto, or in any manner or place whereby any person or property is exposed to injury or damage as a result in such discharge.

(3) Into or within any cave.

50 C.F.R. 27.41

Carrying, possessing, or discharging firearms, fireworks, or explosives on national wildlife refuges is prohibited unless specifically authorized under the provisions of this subchapter C.

Cal. Code Regs. tit. 14, § 4313(a)

(a) No person shall carry, possess or discharge across, in or into any portion of any unit any weapon, firearm, spear, bow and arrow, trap, net, or device capable of injuring, or killing any person or animal, or capturing any animal, or damaging any public or private property, except in underwater parks or designated archery ranges where the Department of Parks and Recreation finds that it is in its best interests.

(b) Nothing herein contained shall be construed in derogation of the use of weapons permitted by law or regulation and to be used for hunting in any unit, or portion thereof, open to hunting.

(c) Firearms not having a cartridge in any portion of the mechanism, other unloaded weapons or devices such as traps, nets, and bows and arrows may be possessed within temporary lodging or mechanical mode of conveyance when such implements are rendered temporarily inoperable or are packed, cased, or stored in a manner that will prevent their ready use.

Cal. Code Regs. tit. 14, § 550(cc)

(cc) Firearms, Archery, and Other Propulsive Equipment.

(1) Nothing in this section shall prohibit the lawful possession of a concealed firearm by an active peace officer listed in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code or a retired peace officer in lawful possession of an identification certificate issued pursuant to Penal Code Section 25455 authorizing the retired officer to carry a concealed firearm. Nor shall this section prohibit the lawful possession of a concealed firearm pursuant to a concealed carry permit issued pursuant to Penal Code Section 26150 or 26155.

(2) Possession, discharge, and use of firearms or archery equipment is prohibited on department lands except within department-designated hunting areas or shooting sites, or with a permit issued by the department, or as authorized for dog training in a designated area, or when fishing with bow and arrow tackle as defined in subsection 550(b)(11) and allowed in subsection 550(h), or when dispatching a trapped animal per subsections 465.5(g)(1) and 550(ee) of these regulations. This prohibition includes air or gas operated devices or guns and all other propulsive devices.

(3) General (Non Hunting) Uses

(A) The use of glass or porcelain targets is prohibited on all department lands. Clay targets shall be used only at designated shooting sites where their use is allowed.

(B) Designated shooting sites are open daily from sunrise to sunset unless otherwise listed in subsections 551(v) or 630(j) of these regulations.

(C) Except as otherwise provided, an adult supervised youth may possess and discharge a BB gun on any wildlife area. A BB gun is not an authorized method of take and may not be used to take wildlife on any wildlife area. A BB gun is defined as an air and/or spring-actuated rifle similar to Daisy BB gun models 96 (Timberwolf), 105 (Buck), or 1938 (Red Ryder), firing a spherical BB no larger than 0.177 inches in diameter (4.5 mm) at a muzzle velocity no greater than 350 feet per second. For the purpose of this section a youth is defined as a visitor under the age of 16.

(4) Hunting Method of Take. Where hunting is allowed, it shall be conducted in accordance with general hunting regulations and subject to sections 550, 550.5, 551, 552, and 630 of these regulations.

(A) Possession or discharge of shotguns larger than twelve gauge is prohibited on all department lands designated as Type A or Type B wildlife areas.

(B) Except for bow and arrow tackle as defined subsection 550(b)(11) and allowed in subsection 550(h), or as otherwise provided, no rifles, pellet or BB guns, combination rifle-shotguns, pistols, archery equipment, or revolvers shall be possessed in the field or discharged on any Type A or Type B wildlife areas. All legal firearms and archery equipment may be used on Type C wildlife areas unless prohibited in subsection 551(r) of these regulations. Firearms and archery equipment may be used on ecological reserves where hunting is authorized in subsection 630(d) of these regulations, subject to any restrictions therein.

(C) The use or possession of shot size larger than T in steel or BB in non-toxic (other than steel) shot is prohibited on all department lands and national wildlife refuges. On those department lands where big game species may be hunted, shotguns with slugs may be used.

(D) A hunter shall not possess more than 25 shot shells while in the field on Type A wildlife areas during the waterfowl season unless otherwise provided for in subsection 551(o) of these regulations. Subsection 551(o) also specifies additional wildlife areas where a hunter shall not possess more than 25 shot shells in the field during the waterfowl season. Only those visitors possessing a valid hunting permit for that day may possess ammunition in the field.

(E) It shall be unlawful to take wildlife except in compliance with the non-toxic shot and certified nonlead projectile requirements of Section 250.1 of these regulations.

(F) Except for bow and arrow tackle defined in subsection 550(b)(11) and allowed in subsection 550(h), archery equipment shall not be used during the waterfowl and pheasant seasons on Type A or Type B wildlife areas, unless provided in subsection 551(u) of these regulations.

(G) Loaded firearms, as defined in Fish and Game Code Section 2006 or Section 25850 of the Penal Code, are prohibited in parking lots, visitor areas, checking stations, and any other facility on department lands.

San Mateo Cty., Cal., County Code of Ordinances 3.68.080(o)

Firearms and Dangerous Weapons. Except as provided in subsection (p) and subsection (q), no person shall have in his possession within any County Park or Recreation area, or on the San Francisco Fish and Game Refuge, and no person shall fire or discharge, or cause to be fired or discharged, across, in, or into any portion of any County Park or Recreation area, or on the San Francisco Fish and Game Refuge, any gun or firearm, spear, bow and arrow, cross bow, slingshot, air or gas weapon or any other dangerous weapon.

Los Angeles Cty., Cal., County Code of Ordinances 13.66.040

A person shall not shoot, fire or discharge, and a person, firm or corporation shall not cause or permit to be shot, fired or discharged, any rifle, shotgun, pistol, revolver or firearm in the general direction of any house, camp or place of human habitation, or in the general direction of any public highway, road, street, way, park or premises, unless the place from which such rifle, shotgun, pistol, revolver or firearm is shot, fired or discharged is at least one-half mile distant from such house, camp or place of human habitation, or is at least one-half mile distant from that portion of such public highway, road, street, way, park or premises toward which such rifle, shotgun, pistol, revolver or firearm is shot, fired or discharged. The exception in Section 13.66.010 to destroying or killing any predatory or dangerous animal does not apply to this section.

Los Angeles Cty., Cal., County Code of Ordinances 13.66.050

A. A person shall not shoot, fire or discharge, and a person, firm or corporation shall not cause or permit to be shot, fired or discharged, upon, along or across any public highway, road, street or way, any rifle, shotgun, pistol, revolver or firearm.

B. The exception in Section 13.66.010 to destroying or killing any predatory or dangerous animal does not apply to this section

Los Angeles Cty., Cal., County Code of Ordinances 13.66.500
Except as otherwise provided in this chapter, a person shall not shoot, fire or discharge, and a person, firm or corporation shall not cause or permit to be shot, fired or discharged in the unincorporated territory lying within the boundaries of any district or area defined in this Part 3, any firearm of any kind having a firing range of, or capable of propelling any bullet, shot or missile for any distance of one-half mile or more.

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2018, an electronic PDF of APPELLANT'S OPENING BRIEF 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.

Date: October 2, 2018

MICHEL & ASSOCIATES, P.C.

/s/ C.D. Michel
C.D. Michel
Counsel for Plaintiffs-Appellants
Michelle Flanagan, et al.