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June 23, 2022

**VIA U.S. CERTIFIED MAIL**

Gregory J. Ahern, Sheriff-Coroner  
Alameda County Sheriff's Department  
Administration Office  
1401 Lakeside Drive, 12th Floor  
Oakland, CA 94612-4305

**Re: NOTICE OF RULING REGARDING CARRY PERMIT POLICIES  
AND PRE-LITIGATION DEMAND**

Dear Sheriff Ahern:

Our firm represents the California Rifle & Pistol Association (CRPA), which was founded in 1875 and has been working to uphold the right of Californians to keep and bear arms ever since. We write urgently on behalf of CRPA concerning the Alameda County Sheriff's Department's policy on CCW permit issuance. Specifically, your website currently states that "*California is a 'May Issue' state; the decision to grant a CCW license is at the discretion of the County Sheriff or Police Chief. Having a CCW license is a privilege, not an entitlement, and the Courts have ruled that a California CCW license is not guaranteed to all persons under the 2nd Amendment of the United States.*"<sup>1</sup> Your website thus essentially boasts that you are enforcing unconstitutional restrictions on the right to bear arms, and indeed, that you deny that right even exists.

While CRPA has long known that such a subjective policy violates the Second Amendment, that fact has now been confirmed by no less than our nation's highest court. CRPA demands that the Alameda County Sheriff's Department immediately repeal its illegal policy requiring law-abiding applicants to prove any "good cause" beyond just a general desire for self-defense. Any attempt to deny or obstruct permits to law-abiding applicants will be met with an immediate lawsuit backed by CRPA.

**The Supreme Court's Recent Decision**

As alluded to above, the Supreme Court of the United States has just issued a ruling in the landmark case of *New York State Rifle & Pistol Association Inc. v. Bruen*. In that case, the Court decided the issue of whether the state of New York's denial of petitioners' applications for

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<sup>1</sup> <https://www.alamedacountysheriff.org/services/ccw-request>

concealed-carry licenses for self-defense violated the Second Amendment. Like California, the New York law prohibited its ordinary law-abiding citizens from carrying a handgun outside the home without a license, and it denied licenses to every citizen who failed to convince the state that he or she has “proper cause” to carry a firearm. That law has now been struck down because the “proper-cause requirement violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms.” *N.Y. State Rifle & Pistol Association v. Bruen, Superintendent of N.Y. State Police*, No. 20-843, 2022 U.S. LEXIS 3055, at \*90 (June 23, 2022). (“*NYSRPA*”)

In the opinion of the Court, Justice Thomas also writes that permit regimes that “do not require applicants to show an atypical need for armed self-defense” are acceptable. *NYSRPA*, 2022 U.S. LEXIS 3055, at n.9. As such, the “shall-issue” regimes that exist in 43 states are permissible, but those of New York, and California, which require applicants to convince issuing authorities of “good cause” or “proper cause”, are not.

Attorney General Bonta has already admitted that California’s requirement for “good cause” is no longer acceptable under this precedent decision: “California similarly requires applicants for licenses to carry firearms in public to show “good cause,” and is likely unconstitutional under *Bruen*.”<sup>2</sup> The Alameda County Sheriff’s Department must immediately change its unconstitutional permit issuance policy.

### **Current California Law Regarding Licensing to Carry Concealed Weapons**

Regarding the issuance of licenses to carry concealed weapons, California law lists the requirements as follows:

*“(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.”*

(Pen. Code, § 26150, subd. (a); see also Pen. Code, § 26155, subd. (a) [referring to the same requirements, but for when a City Police Department handles permit issuance].) While the Supreme Court’s decision allows most of California’s requirements to stand, subsection (a)(2),

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<sup>2</sup> <https://oag.ca.gov/news/press-releases/attorney-general-bonta-affirms-his-support-commonsense-gun-laws-response-supreme>

relating to “good cause”, is now no longer valid and the Alameda County Sheriff’s Department may no longer deny permits on that basis.

CRPA understands that some people fear the idea of liberal carry permit issuance, predicting it can lead to “blood in the streets” or “wild west style violence”. Yet such fears are completely unfounded and should not be used as a reason to try and obstruct the Court’s ruling in *NYSRPA*. California is, like New York, one of the few remaining outlier states where so-called “may issue”<sup>3</sup> permitting regimes still exist. The overwhelming majority of states<sup>4</sup> are now either “shall issue”, where all law-abiding citizens who apply and take the required class (if any) are issued permits, or “constitutional carry”, where all citizens<sup>5</sup> who can legally own a gun may carry it on their person openly or concealed. This includes even states that are otherwise politically similar to California, such as Oregon, Washington, Vermont, and others.

Yet even within California, the Alameda County Sheriff’s Department’s policy is in the minority. Following a lawsuit brought by CRPA and other Plaintiffs in 2016, the California Court of Appeals held that because California’s statutory scheme permits concealed carry only upon a showing of good cause and because open carry is also restricted, requiring “good cause” for a concealed carry license violates the Second Amendment. (*Peruta v. Cnty. of San Diego* (9th Cir. 2016) 824 F.3d 919, 924.)<sup>6</sup> Though that result was ultimately overturned, it still led several more counties to more liberally issue permits. Today, a large majority of counties in California are effectively shall-issue, including the counties of Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Inyo, Kern, Lake, Madera, Mariposa, Mendocino, Merced, Modoc, Monterey, Placer, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Joaquin, Shasta, Sierra, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Ventura, Yuba.

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<sup>3</sup> The degree to which permits are issued under such regimes greatly varies. Some places, like Los Angeles County and San Diego County currently, issue to a few regular citizens but not to most. Others only issue to the famous and the well-connected, like San Francisco County. And Hawaii and New Jersey effectively issue to no one, with Hawaii having never issued a carry permit to a private citizen. (*Young v. Hawaii* (9th Cir. 2021) 992 F.3d 765, 859 [O’Scannlain, C.J., dissenting].)

<sup>4</sup> “In 43 States, the government issues licenses to carry based on objective criteria.” *NYSRPA*, 2022 U.S. LEXIS 3055, at \*13. “To be clear, nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States’ “shall-issue” licensing regimes...” *NYSRPA*, 2022 U.S. LEXIS 3055, at n. 9.

<sup>5</sup> Some constitutional carry states do set a minimum age requirement, limiting carry to people age 21 and older.

<sup>6</sup> That appellate panel decision was overturned *en banc*, as all wins for Second Amendment rights are in the Ninth Circuit. But now, it has been vindicated with the *NYSRPA* decision. While the Supreme Court denied review to *Peruta* at the time, Justice Thomas wrote a scathing dissent from the denial of cert, concluding that “[t]he Court’s decision to deny certiorari in this case reflects a distressing trend: the treatment of the Second Amendment as a disfavored right.” (*Peruta v. California* (2017) 137 S.Ct. 1995, 1999 [Thomas J., dissenting from denial of certiorari].) Following *NYSRPA*, that “distressing trend” has now finally come to an end.

In other words, a large majority of California counties are already mostly in compliance with the *NYSRPA* ruling, with several having been effectively shall-issue for many years. These are the example that Alameda County Sheriff's Department must now follow.

### **The Alameda County Sheriff's Department Must Adapt its Carry Permit Policy to the *NYSRPA* Ruling**

CRPA understands that changes in policy, even changes to adapt to a landmark Supreme Court ruling, may take some time to implement. To the extent that the Alameda County Sheriff's Department acts in good faith to expeditiously revise its policy, CRPA and its members will be reasonably patient in waiting for it to do so. However, there is also no need for any protracted timeline for coming into compliance, given the great many examples the Sheriff's Department can follow.<sup>7</sup>

For instance, Tehama County Sheriff's Department states on its Concealed Weapons Permits website that "Sheriff-Coroner Dave Hencratt supports the right of law-abiding citizens to keep and bear arms. In this regard, all qualified residents of Tehama County are eligible to apply for a permit to carry concealed weapons."<sup>8</sup> The webpage then lists off the four requirements for a permit including the age minimum of 21, the residency requirement, the mandatory safety course, and passing the background check. As another example, San Joaquin County Sheriff's Department expressly states on its website that "[p]ersonal protection or self-defense is sufficient to establish good cause" for the issuance of a permit.<sup>9</sup> The policies of Tehama or San Joaquin county are exactly what the Alameda County Sheriff's Department should replicate to be in compliance with *NYSRPA*.

CRPA hereby demands that the Alameda County Sheriff's Department move with all deliberate speed to honor the right to bear arms of all citizens living in its jurisdiction by adapting its permit system as described above. Any refusal to do so will be met with an immediate lawsuit backed by CRPA. Furthermore, while the Supreme Court's ruling primarily pertained to the good cause requirement, CRPA will remain on alert for any efforts to undermine the right to bear arms through excessive permit processing times, high fees meant to disenfranchise working class citizens of their right to bear arms, and any other measures aimed at undermining the Court's ruling. Indeed, the Court warned that such cynical obstruction would be grounds for a constitutional challenge: "we do not rule out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in processing license applications or exorbitant fees deny ordinary citizens their right to public carry." *NYSRPA*, U.S. LEXIS 3055, at n.9.

CRPA's hope is that the Alameda County Sheriff's Department will honor the rule of law and abide by the Supreme Court's ruling as soon as possible. To the extent the Alameda County Sheriff's Department intends to do just that, CRPA is happy to offer its guidance and assistance

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<sup>7</sup> California Attorney General requires standard applications and licenses, but not standard policies. This is up to the individual Sheriffs to develop.

<sup>8</sup> <https://tehamaso.org/administration/licenses-permits/concealed-weapons/>

<sup>9</sup> <https://www.sjsheriff.org/concealed-weapon-permit/>

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on any questions the Sheriff's Department may have. Please do not hesitate to reach out to us with any questions or concerns.

Sincerely,  
**Michel & Associates, P.C.**



C.D. Michel