

20-56174

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Matthew Jones; *et al.*,

Plaintiffs,

v.

**Rob Bonta, in his official capacity as
Attorney General of the State of California;
et al.,**

Defendants.

On Appeal from the
United States District
Court for the Southern
District of California

Civil No. 3:19-cv-01226-
L-AHG

The Honorable M. James
Lorenz, Judge

**JOINT MOTION FOR EXTENSION OF TIME
TO FILE PETITION FOR PANEL
REHEARING OR REHEARING EN BANC**

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Bureau of Firearms*

**JOINT MOTION FOR EXTENSION OF TIME TO FILE PETITION
FOR PANEL REHEARING OR REHEARING EN BANC**

Pursuant to Ninth Circuit Rule 31-2.2, Defendants-Appellees (Rob Bonta [in his official capacity as Attorney General of the State of California] and Luis Lopez [in his official capacity as Director of the Department of Justice Bureau of Firearms]) and Plaintiffs-Appellants (Matthew Jones, Thomas Furrh, Kyle Yamamoto, PWGG, L.P., North County Shooting Center, Inc., Beebe Family Arms and Munitions LLC, Firearms Policy Coalition, Inc., Firearms Policy Foundation, The California Gun Rights Foundation, and Second Amendment Foundation) (collectively, “the parties”) respectfully submit this joint motion for an extension of time of 61 days in which to file a petition for panel rehearing or rehearing en banc in this appeal, up to and including Monday, July 25, 2022. The requested extension of time will permit the parties time to consider whether to file petitions for panel rehearing or rehearing en banc in this significant case, and to factor the U.S. Supreme Court’s anticipated decision in *New York State Rifle & Pistol Ass’n v. Bruen* (NYSRPA), No. 20-843, which will address potentially related Second Amendment issues, into their decisions.

The panel in this appeal issued its decision and judgment was entered on May 11, 2022. Unless time is extended, any petition for rehearing would

be due on or before May 25, 2022. Fed. R. App. P. 35(c) & 40(a)(1). This Court may extend that due date for good cause, including a showing of diligence and substantial need. *See* 9th Cir. R. 31-2.2(b); *see also* Fed. R. App. P. 26(b), 40(a)(1).

As set forth below and in the accompanying Declaration of Jennifer E. Rosenberg (Rosenberg Decl.), there is substantial need for the 61-day extension requested, and good cause exists to grant the request. *See* 9th Cir. R. 31-2.2(b); Rosenberg Decl. ¶¶ 4-8. Several considerations support the parties' request.

First, the extension of time is necessary to allow the parties and their counsel sufficient opportunity to thoughtfully assess whether to file petitions for panel rehearing or rehearing en banc. This case involves significant constitutional questions of first impression in this Circuit: whether California's requirement that individuals between the ages of 18 and 20 secure a hunting license in order to purchase long guns likely violates the Second Amendment, and whether California's limitations on the sale and transfer of semi-automatic centerfire rifles to individuals in the same age range likely violate the Second Amendment. The issues are weighty and complex, as evidenced by the 100 pages of the majority, concurring, and

dissenting opinions of the sharply divided panel here. Rosenberg Decl., ¶ 5.

In addition, the U.S. Supreme Court is expected to issue its decision in *NYSRPA* soon: that case was argued in November 2021, and the current schedule of the Supreme Court indicates that the last day on which the Court will hand down decisions for cases argued this Term is June 27, 2022.¹

Although *NYSRPA* concerns a Second Amendment challenge to a different type of law than the one challenged in this case, that decision may affect the legal framework under which this case will ultimately be decided. Granting a 61-day extension would permit the parties to determine whether a petition for rehearing is warranted in the first instance, and may help focus and guide the parties' briefing and the Court's review of any petition filed. Rosenberg Decl., ¶ 6.

Second, counsel for Defendants-Appellees with primary briefing responsibility in this appeal also bears primary responsibility for other active matters requiring significant attention in the coming weeks, including dispositive motion briefing, a court hearing, depositions, and other discovery in a significant California state court matter relating to the COVID-19

¹ It is possible that the Supreme Court will add additional “hand-down” days in late June or early July.

pandemic. Rosenberg Decl. ¶ 7.

Finally, as to Defendants-Appellees, preparation of any petition for rehearing will involve collaboration among a number of attorneys and officials in the Department of Justice, including in the Civil Division, the Office of the Solicitor General, the Bureau of Firearms, and the Executive Office. Rosenberg Decl. ¶ 8. This collaboration will require sufficient time to complete. *Id.*

Counsel for all parties have worked diligently on this case, intend to continue to do so, and believe that petitions for panel rehearing or rehearing en banc, if any, will be filed within the time requested. Rosenberg Decl. ¶ 9; *see also* 9th Cir. R. 31-2.2(b)(5). None of the parties has requested any previous extensions of time to petition for rehearing. Rosenberg Decl. ¶ 10. In compliance with Circuit Rule 31-2.2(b), this motion is filed at least 7 days before expiration of the time prescribed for filing a petition for panel rehearing or rehearing en banc.

On May 13, 2022, at 5:11 p.m., counsel for Defendants-Appellees e-mailed Haley Proctor, David Thompson, John Ohlendorf, Peter Patterson, and John Dillon, counsel for Plaintiffs-Appellants, informing them that Defendants-Appellees intended to request this extension and asking whether

Plaintiffs-Appellants would like to join in this request, and if not, whether they would oppose the request. Rosenberg Decl. ¶ 3. On May 13, 2022, at 8:28 p.m., John Dillon replied on behalf of Plaintiffs-Appellants to state that Plaintiffs-Appellants would join this motion. *Id.*

CONCLUSION

For the reasons stated above and set forth in the Declaration of Jennifer E. Rosenberg filed herewith, the parties respectfully request that the Court grant their joint request for a 61-day extension of time and set the due date for filing any petition for panel rehearing or rehearing en banc as no later than Monday, July 25, 2022.²

² There are no designated transcripts from the district court in this appeal, and thus no court reporter is in default. 9th Cir. R. 31-2.2(b)(7).

Dated: May 16, 2022

California Department of Justice
Office of the Attorney General
XAVIER BECERRA
Attorney General of California
THOMAS S. PATTERSON
Senior Assistant Attorney
General
MARK R. BECKINGTON
Supervising Deputy Attorney General
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/s/ Jennifer E. Rosenberg
JENNIFER E. ROSENBERG
Deputy Attorney General
Attorneys for Defendants-Appellees

Dated: May 16, 2022

Dillon Law Group APC



JOHN W. DILLON
Attorneys for Plaintiffs-Appellants

NINTH CIRCUIT RULE 25-5(e) ATTESTATION

I, Jennifer E. Rosenberg, hereby certify and attest that all other parties on whose behalf this Joint Motion is submitted concur in the filing's content, and that I have obtained permission from counsel for Plaintiffs-Appellants to file this Joint Motion.

Dated: May 16, 2022

/s/ Jennifer E. Rosenberg
JENNIFER E. ROSENBERG
Deputy Attorney General

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**DECLARATION OF JENNIFER E. ROSENBERG IN SUPPORT OF JOINT
MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR PANEL
REHEARING OR REHEARING EN BANC**

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Bonta, in his official capacity as Attorney
General of the State of California, and
Luis Lopez, in his official capacity as
Director of the Department of Justice
Bureau of Firearms*

DECLARATION OF JENNIFER E. ROSENBERG

I, Jennifer E. Rosenberg, declare:

1. I am an attorney duly licensed to practice law in the State of California.

I am authorized to appear before the above-entitled Court. I am employed as a Deputy Attorney General for the California Attorney General's Office within the California Department of Justice. I am the lead attorney assigned to represent Defendants-Appellees Rob Bonta (in his official capacity as Attorney General of the State of California) and Luis Lopez (in his official capacity as Director of the Department of Justice Bureau of Firearms) in this action.

2. I make this declaration in support of the joint motion of Defendants-Appellees and Plaintiffs-Appellants for an extension of time of 61 days in which to file a petition for panel rehearing or rehearing en banc in this appeal, up to and including Monday, July 25, 2022.

3. On May 13, 2022, at 5:11 p.m., I e-mailed Haley Proctor, David Thompson, John Ohlendorf, Peter Patterson, and John Dillon, counsel for Plaintiffs-Appellants, informing them that Defendants-Appellees intended to request this extension and asking whether Plaintiffs-Appellants would like to join in this request, and if not, whether they would oppose the request. On May 13, 2022, at 8:28 p.m., John Dillon replied on behalf of Plaintiffs-Appellants to state that Plaintiffs-Appellants would join this motion.

4. There is substantial need for the 61-day extension requested, and good cause exists to grant the request. Several considerations support the request.

5. The extension of time is necessary to allow the parties and their counsel sufficient opportunity to thoughtfully assess whether to file petitions for panel rehearing or rehearing en banc. This case involves significant constitutional questions of first impression in this Circuit: whether California's requirement that individuals between the ages of 18 and 20 secure a hunting license in order to purchase long guns likely violates the Second Amendment, and whether California's limitations on the sale and transfer of semi-automatic centerfire rifles to individuals in the same age range likely violate the Second Amendment. The issues are weighty and complex.

6. Further, the U.S. Supreme Court is expected to issue its decision in *New York State Rifle & Pistol Ass'n v. Bruen* (NYSRPA), No. 20-843, soon: that case was argued in November 2021, and the current schedule of the Supreme Court indicates that the last day on which the Court will hand down decisions for cases argued this Term is June 27, 2022. It is possible that the Supreme Court will add additional "hand-down" days in late June or early July. Although *NYSRPA* concerns a Second Amendment challenge to a different type of law than the one challenged in this case, that decision may affect the legal framework under which this case will ultimately be decided. Granting a 61-day extension would permit the

parties to determine whether a petition for rehearing is warranted in the first instance, and may help focus and guide the parties' briefing and the Court's review of any petition filed.

7. I am the attorney with primary briefing responsibility in this appeal for Defendants-Appellees. I also bear primary responsibility for other active matters requiring significant attention in the coming weeks, including dispositive motion briefing, a court hearing, depositions, and other discovery in a significant California state court matter relating to the COVID-19 pandemic.

8. As to Defendants-Appellees, preparation of any petition for rehearing will involve collaboration among a number of attorneys and officials in the Department of Justice, including in the Civil Division, the Office of the Solicitor General, the Bureau of Firearms, and the Executive Office. This collaboration will require sufficient time to complete.

9. Counsel for all parties have worked diligently on this case, intend to continue to do so, and believe that any petitions for panel rehearing or rehearing en banc, if any, will be filed within the time requested.

10. None of the parties has requested any previous extensions of time to petition for rehearing.

11. There are no designated transcripts from the district court in this appeal, and thus no court reporter is in default.

For the foregoing reasons, counsel for all parties respectfully request an extension of sixty-one (61) days, to and including Monday, July 25, 2022, within which to file a petition for rehearing or rehearing en banc.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 16th day of May, 2022, at Los Angeles California.

/s/ Jennifer E. Rosenberg
JENNIFER E. ROSENBERG