21-55608

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES MILLER, et al.,

Plaintiffs-Appellees,

v.

CALIFORNIA ATTORNEY GENERAL ROB BONTA; and DOJ BUREAU OF FIREARMS DIRECTOR LUIS LOPEZ,

Defendants-Appellants.

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

No. 3:19-cv-01537-BEN-JLB
The Honorable Roger T. Benitez, Judge

OPPOSITION TO MOTION TO LIFT STAY AND MOTION TO VACATE AND REMAND FOR FURTHER PROCEEDINGS

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INTRODUCTION

In *New York State Rifle & Pistol Ass'n v. Bruen*, __ S. Ct. __, 2022 WL 2251305 (U.S. June 23, 2022), the Supreme Court announced a new framework for analyzing Second Amendment claims. In lieu of the "two-step test" that this Court and most other federal courts of appeals had adopted for resolving those claims, *Bruen* held that courts must apply a standard "rooted in the Second Amendment's text, as informed by history," *id.* at *9. The Court also provided important guidance about how that test should be applied. *See id.* at *11-*14. And it recognized that this historical analysis "can be difficult" and requires courts to make "nuanced judgments about which evidence to consult and how to interpret it." *Id.* at *11.

In light of *Bruen*, this Court should vacate the district court's judgment and remand this case to the district court for further proceedings. Plaintiffs challenge important provisions of California's Assault Weapons Control Act (AWCA), a statute that has been in place for more than three decades and is a critical part of California's efforts to protect its residents from the deadly effects of gun violence. But the parties briefed—and the district court principally resolved—this case under the two-step framework that was the prevailing approach for scrutinizing Second Amendment claims before *Bruen*. Vacatur and remand would allow the parties compile the kind of

historical record that *Bruen* requires, and would allow the district court to answer a number of important questions about how *Bruen* should be applied in the first instance. Indeed, that course is especially appropriate in this case, which involves "unprecedented societal concerns" and "dramatic technological changes," and thus requires an especially "nuanced approach." *Bruen*, 2022 WL 2251305, at *12. And vacatur and remand here would accord with how this this Court has handled other cases involving Second Amendment claims that were pending when *Bruen* was decided, including one that challenged many of the same AWCA provisions at issue here. *See Rupp v. Bonta*, 9th Cir. No. 19-56004 (June 28, 2022) (9th Cir. Dkt. 71); *McDougall v. Cty. of Ventura*, 9th Cir. No. 20-56220 (June 29, 2022) (en banc) (9th Cir. Dkt. 55); *Martinez v. Villanueva*, 9th Cir. No. 20-56233 (July 6, 2022) (9th Cir. Dkt. 75).[1]

Because vacatur and remand is appropriate in this case, this Court should also deny as moot Plaintiffs' motion to lift the stay of the district court's judgment or order expedited briefing. But if it does not, there is no basis for lifting the stay or ordering expedited briefing. With respect to the

[1] The parties have met and conferred about Defendants' request to vacate and remand, and Plaintiffs have informed counsel that they oppose this request.

stay, Defendants still have a substantial case on the merits after *Bruen*, which recognized that states may prohibit the possession of dangerous and unusual weapons. 2022 WL 2251305, at *9; *id.* at *39 (Kavanaugh, J., concurring) (same). And the equitable considerations that supported this Court's decision to stay the district court's judgment in June 2021 remain as compelling today as they were a year ago: then, as now, a stay is necessary to preserve the status quo and prevent a flood of assault weapons from entering the State. With respect to the request for expedited briefing, the same factors that counsel in favor of returning this case to the district court counsel against deciding this case in this Court on an expedited basis. *Bruen* sets forth a new standard that should be applied with careful attention to the relevant "evidentiary principles and default rules," *id.* at *11 n.6—matters that should be left to the district court, not resolved by this Court in a hurried fashion.

PROCEDURAL HISTORY

This is an appeal from a final judgment entered after expedited discovery and a consolidated motion for a preliminary injunction and bench trial on the merits. Plaintiffs assert that various provisions of California's assault weapons restrictions violate the Second Amendment. D. Ct. Dkt. 9 at 41–42. *See generally* Defs.' Emergency Mot. to Stay J. Pending Appeal

(Defs.' Emergency Mot.) (9th Cir. Dkt. 2-1) at 3-5 (reviewing the provisions of the AWCA challenged here). On December 6, 2019, Plaintiffs filed a motion for preliminary injunction, D. Ct. Dkt. 22. On January 23, 2020, Defendants filed their opposition, D. Ct. Dkt. 33.

In the district court, the parties focused on whether the challenged restrictions were constitutional under the two-step framework that this Court had established for analyzing Second Amendment claims. *See* D. Ct. Dkt. 22 at 18-27; D. Ct. Dkt. 33 at 10-29; D. Ct. Dkt. 103 at 22-34; D. Ct. Dkt. 104 at 11-58. Under that approach, courts asked whether the regulations at issue "burden[ed] conduct protected by the Second Amendment," and if so, "appl[ied] an appropriate level of scrutiny." *E.g.*, *United States v. Chovan*, 735 F.3d 1127, 1136 (9th Cir. 2013). The first step required courts to discern the "historical scope of the Second Amendment" by asking whether the regulation was "one of the 'presumptively lawful regulatory measures' identified in" the Supreme Court's decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), or "whether the record includes persuasive historical evidence establishing that the regulation at issue imposes prohibitions that fall outside the historical scope of the Second Amendment." *Jackson v. City & Cty. of San Francisco*, 746 F.3d 953, 960 (9th Cir. 2014). If that analysis revealed that the challenged law fell outside

the "historical scope of the Second Amendment," then courts would uphold them without further analysis. *Id.*

If, however, that analysis showed that the law fell within the scope of the Second Amendment, courts proceeded to the second step of the inquiry, and determined the appropriate level of scrutiny by evaluating "(1) how close the law c[ame] to the core of the Second Amendment right and (2) the severity of the law's burden on the right." *Jackson*, 746 F.3d at 960-961 (quotation marks omitted).[2] If the law severely burdened the "core" Second Amendment right of "law-abiding, responsible citizens to use arms in defense of hearth and home," then strict scrutiny applied. *Id.* at 961 (quotation marks omitted). For all other cases, intermediate scrutiny applied. *Id.* To satisfy that standard, the government needed to show that its law served a "significant, substantial, or important" interest, and that there was a "reasonable fit between the challenged regulation and the asserted objective." *Chovan*, 735 F.3d at 1139.

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[2] In many cases, this Court followed the "well-trodden and 'judicious course'" of assuming without deciding that the challenged regulation burdened protected conduct at step one if the regulation satisfied heightened scrutiny at step two. *Pena v. Lindley*, 898 F.3d 969, 976 (9th Cir. 2018) (citation omitted); *see, e.g.*, *Duncan v. Bonta*, 19 F.4th 1087, 1102-1103 (9th Cir. 2021) (en banc), *vacated and remanded*, __ S. Ct. __, 2022 WL 2347579 (U.S. June 30, 2022); *Silvester v. Harris*, 843 F.3d 816, 826-827 (9th Cir. 2016); *Bauer v. Becerra*, 858 F.3d 1216, 1221 (9th Cir. 2017).

Consistent with this framework, in the district court, Defendants presented some evidence showing that the AWCA was consistent with regulations adopted by various States and the federal government in the early twentieth century. *See* D. Ct. Dkt. 33-20–33-24; Defs.' Trial Exs. S-W. But they principally focused on providing evidence showing that the AWCA is reasonably fitted to important government interests. Among other things, Defendants introduced expert testimony from:

- Lucy Allen, an economist at NERA Economic Consulting, who provided written testimony concerning the average number of rounds fired in self-defense and the greater numbers of fatalities and injuries in public mass shootings involving assault weapons, D. Ct. Dkt. 33-1; Defs.' Ex. A;
- Dr. Christopher Colwell, Chief of Emergency Medicine at San Francisco General Hospital, who provided written testimony concerning the physical effects of the use of assault weapons in mass shootings, based on his experiences treating victims of the Columbine and Aurora mass shootings, D. Ct. Dkt. 33-2; Defs.' Ex. B;

- Dr. John J. Donohue, professor at Stanford Law School, who explained the social science data and scholarship supporting restrictions on assault weapons, D. Ct. Dkt. 33-3; Defs.' Ex. C;
- Blake Graham, Assistant Director of the California Department of Justice Bureau of Firearms, who provided testimony on the different features and configurations that qualify a firearm as an "assault weapon" and explained how these different attributes can enhance the lethality of those weapons, D. Ct. Dkt. 33-4; Defs.' Ex. D; and,
- Dr. Louis Klarevas, research professor at Teachers College, Columbia University, provided testimony concerning the increased numbers of fatalities and injuries in mass shootings involving assault weapons, as well as data indicating that states with assault weapons restrictions experience fewer mass shootings and lower casualty counts when they occur, D. Ct. Dkt. 33-5; Defs.' Ex. E.

On October 19, 20, and 22, 2020, the district court held an evidentiary hearing on Plaintiffs' motion for a preliminary injunction, taking oral testimony from defendants' witnesses. D. Ct. Dkt. 53, 54, 55. It then

ordered that the motion for preliminary injunctive relief be consolidated with an expedited bench trial on the merits, D. Ct. Dkt. 55, and allowed the parties to engage in expedited discovery. Following a two-day trial, on June 4, 2021, the district court issued its decision, which held that the challenged provisions of the AWCA violate the Second Amendment. *Miller v. Bonta*, 542 F. Supp. 3d 1009, 1069 (S.D. Cal. 2021). The district court reached that conclusion by applying two different tests. First, under what it called the "*Heller* test," the district court concluded that the AWCA was unconstitutional because it prohibited the possession of weapons that are "commonly owned by law-abiding citizens for a lawful purpose." *Id.* at 1021. In the alternative, the court held that the AWCA was unconstitutional under the two-step framework, reasoning that the challenged provisions of the AWCA burden conduct protected by the Second Amendment, and were unconstitutional under any level of scrutiny. *Id.* at 1023–1068. The court permanently enjoined defendants from enforcing the challenged provisions, but stayed the effect of that judgment to allow Defendants to seek a stay of the injunction pending appeal. *Id.* at 1069.

On June 10, 2021, Defendants filed a notice of appeal in the district court, D. Ct. Dkt. 117, and then filed an emergency motion to stay the judgment pending appeal in this Court, *see* Defs.' Emergency Mot. at 1-25.

On June 28, this Court granted that motion "pending resolution of *Rupp v. Bonta*, 9th Cir. No. 19-56004," stayed briefing in this appeal, and instructed the parties to file a status report within 14 days of this Court's decision in *Rupp*. 9th Cir. Dkt. 13. *Rupp* also involved a Second Amendment challenge to various provisions of the AWCA. *See* 401 F. Supp. 3d 978 (C.D. Cal. 2019), *vacated and remanded*, 2022 WL 2382319 (9th Cir. June 28, 2022). The district court in that case upheld the challenged AWCA provisions at both steps of the two-step framework, *id.* at 984-993, and the appeal was briefed and argued in this Court by the time the district court in this case entered its judgment. *See Rupp*, 9th Cir. Dkt. 63. After argument, the *Rupp* panel held proceedings in that case in abeyance pending resolution of two other cases: *Duncan v. Bonta*, 9th Cir. Case No. 19-55376, a case being considered by an en banc panel of this Court; and *New York State Rifle & Pistol Ass'n v. Bruen*, U.S. Supreme Court Case No. 20-843. *See Rupp*, 9th Cir. Dkts. 65 & 68.[3]

[3] The en banc panel in *Duncan* held that California's restrictions on large-capacity magazines were constitutional under the two-step framework. 19 F.4th at 1099-1111. The plaintiffs in that case sought Supreme Court review of that decision; and on June 30, 2022, the Supreme Court vacated the judgment and remanded the case to this Court for further consideration in light of *Bruen*. *See Duncan v. Bonta*, __ S. Ct. __, 2022 WL 2347579 (U.S. June 30, 2022).

On June 23, 2022, the United States Supreme Court issued its decision in *Bruen*. *See* __ S. Ct. __, 2022 WL 2251305 (U.S. June 23, 2022). On June 28, the panel presiding over *Rupp* sua sponte vacated the district court's judgment and remanded the case to the district court for further proceedings consistent with the decision in *Bruen*. *Rupp*, Dkt. 71. Two days later, Plaintiffs filed a motion to lift the stay or, alternatively, to set expedited briefing and argument, requesting immediate relief.

ARGUMENT

I. THIS COURT SHOULD VACATE THE DISTRICT COURT'S JUDGMENT AND REMAND FOR FURTHER PROCEEDINGS IN LIGHT OF *BRUEN*

In *New York State Rifle & Pistol Ass'n v. Bruen*, __ S. Ct. __, 2022 WL 2251305 (U.S. June 23, 2022), the Supreme Court announced a new rubric for analyzing Second Amendment claims. *Bruen* "decline[d] to adopt" the "'two-step' framework" for analyzing Second Amendment claims that this and most other federal courts of appeals had "coalesced around" after the Supreme Court's decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010). *Bruen*, 2022 WL 2251305, at *7-*8. Instead, *Bruen* directs courts to scrutinize Second Amendment claims by applying a "methodology centered on constitutional text and history." *Id.* at *10. Under that approach, courts

must initially assess whether the "Second Amendment's plain text covers" the regulated conduct, *Bruen*, 2022 WL 2251305, at *8—*i.e.*, whether the regulation at issue prevents any "people" from "kee[ing]" or "bear[ing]" "Arms," U.S. Const. amend. II. If the answer to that question is yes, then the government can justify its regulation by showing that the challenged law is "consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 2022 WL 2251305, at *11.

In some cases, *Bruen* provides that this historical inquiry will be "fairly straightforward," such as when a challenged law addresses a "general societal problem that has persisted since the 18th century." *Bruen*, 2022 WL 2251305, at *12. But in others—particularly those where the challenged laws address "unprecedented societal concerns or dramatic technological changes"—this historical analysis requires a "more nuanced approach." *Id.* Governments can justify regulations of that sort by "reasoning by analogy," a process that requires the government to show that its regulation is "'relevantly similar'" to a "well-established and representative historical analogue." *Id.* at *13 (emphasis omitted). And while the Court did not "provide an exhaustive survey of the features that render regulations relevantly similar under the Second Amendment," it did identify "two metrics: how and why the regulations burden a law-abiding citizen's right to

armed self-defense." *Id.* Under *Bruen*, a modern regulation is consistent with the Second Amendment if it "impose[s] a comparable burden on the right of armed self-defense" as its historical predecessors, and the modern and historical laws are "comparably justified." *Id.*; *see also id.* (modern-day regulation need not be a "dead ringer" for historical precursors or a "historical *twin*" to "pass constitutional muster").

In light of this new test, this Court should vacate the district court's judgment and remand for further proceedings. In the proceedings below, the parties focused on whether the challenged provisions of the AWCA were constitutional under the prevailing two-step framework for analyzing Second Amendment claims. *See supra* pp. 4-7. And the district court principally resolved this case on that basis. *See Miller v. Bonta*, 542 F. Supp. 3d 1009, 1023-1068 (S.D. Cal. 2021). The new text-and-history standard redirects the Second Amendment inquiry, and places the burden squarely on the government to "identify an American tradition justifying" the challenged regulation. *Bruen*, 2022 WL 2251305, at *18; *see also id.* at *28 ("[W]e are not obliged to sift the historical materials for evidence to sustain New York's statute. That is [the State's] burden."). And as *Bruen* recognizes, this analysis "can be difficult," and sometimes requires judges to "resolv[e] threshold questions" and "mak[e] nuanced judgments about which evidence

to consult and how to interpret it." *Id.* at *11 (quoting *McDonald*, 561 U.S. at 803-804 (Scalia, J., concurring)). That is especially true in cases like this one, which "implicat[es] unprecedented societal concerns [and] dramatic technological changes," and thus requires a "nuanced approach." *Id.* at *12; *see also id.* at *14 ("[W]e acknowledge that 'applying constitutional principles to novel modern conditions can be difficult and leave close questions at the margins.'" (citation omitted)).

Neither the parties nor the district court had the benefit of *Bruen* during the proceedings below. And while the district court briefly reviewed some of the history relevant to the question presented here, *see* Pls.' Mot. to Lift Stay (Pls.' Mot.) (9th Cir. Dkt. 21) at 4-5 (citing *Miller*, 542 F. Supp. 3d at 1024-1025), it did so without the benefit of *Bruen*, which clarified the historical inquiry that the lower court must conduct in important ways. For example, the district court did not consider whether the AWCA imposes a "comparable burden on the right of armed self-defense" to the relevant historical analogue, nor whether the AWCA is "comparably justified." *Bruen*, 2022 WL 2251305, at *13. In conducting that inquiry, the district court will need to determine which "evidentiary principles and default rules" apply, a process that will be informed by "the principle of party

presentation." *Id.* at *11 n.6. These and other "difficult" questions, *id.* at *11, should be addressed by the district court in the first instance.[4]

And vacating the district court's judgment and remanding for further proceedings in light of *Bruen* would accord with what this Court has done in three other appeals raising Second Amendment claims that were pending when *Bruen* was decided—including one that raised a similar challenge to the provisions of the AWCA challenged in this case. *See Rupp v. Bonta*, 9th Cir. No. 19-56004 (June 28, 2022) (9th Cir. Dkt. 71); *McDougall v. Cty. of Ventura*, 9th Cir. No. 20-56220 (June 29, 2022) (en banc) (9th Cir. Dkt. 55); *Martinez v. Villanueva*, 9th Cir. No. 20-56233 (July 6, 2022) (9th Cir. Dkt. 75). It would also be consistent with actions taken by the Supreme Court in several cases that presented important Second Amendment issues similar to the ones raised here. *See Duncan v. Bonta*, __ S. Ct. __, 2022 WL 2347579 (U.S. June 30, 2022) (remanding Second Amendment challenge to California's restrictions on large-capacity magazines for further consideration in light of *Bruen*); *Bianchi v. Frosh*, __ S. Ct. __, 2022 WL

[4] Although the district court alternatively applied what it called the "*Heller* test," *Miller*, 542 F. Supp. 3d at 1021-1023, *Bruen* makes clear that governments can justify their restrictions on firearms—even those that are "popular," *id.* at 1021—by reference to an appropriate historical tradition. *See infra* p. 17 n.8.

2347601 (U.S. June 30, 2022) (same with respect to challenge to Maryland's assault weapons restrictions); *Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. Bruck*, __ S. Ct. __, 2022 WL 2347576 (U.S. June 30, 2022) (same with respect to challenge to New Jersey's large-capacity magazine restrictions). Plaintiffs provide no persuasive basis for taking a different approach in this case.[5]

II. THE MOTION TO LIFT THE STAY OR ORDER EXPEDITED BRIEFING SHOULD BE DENIED AS MOOT

Because this Court should vacate the district court's judgment and remand this matter for further proceedings, it should also deny Plaintiffs' motion to lift the stay or order expedited briefing as moot. At a minimum, however, there is no basis for lifting the stay or resolving the complex questions raised by this case on a compressed briefing and argument schedule.

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[5] This case is very different from other cases in which *Bruen* plainly controls. For example, the plaintiffs in *Flanagan v. Bonta*, 9th Cir. Case No. 18-55717, challenged California's requirement that to secure a permit to carry firearms in most public places, applicants must show that they have "good cause." *See Flanagan*, Appellants' Opening Br., 9th Cir. Dkt. 16 (Oct. 2, 2018). Although *Bruen* involved a challenge to New York's similar "proper cause" requirement, *see Bruen*, 2022 WL 2251305, at *5, California quickly recognized that its similar "good cause" requirement was unconstitutional in light of *Bruen* and therefore controlled the outcome in *Flanagan*. *See Flanagan*, 9th Cir. Dkt. 64.

Both the merits and the equitable considerations militate against lifting the stay. Contrary to Plaintiffs' sweeping claim, Pls.' Mot. at 1-6, Defendants *do* have a meaningful prospect of success under *Bruen*'s text-and-history approach. *Bruen* makes clear that the Second Amendment is not a "regulatory straightjacket." 2022 WL 2251305, at *13.[6] Even assuming that the AWCA regulates conduct covered by the "plain text" of the Second Amendment, *Bruen*, 2022 WL 2251305, at *8, the regulations challenged here are "consistent with the Nation's historical tradition of firearm regulation," *id.* at *11. Like *Heller*, *Bruen* makes clear that modern laws that restrict access to firearms that pose special threats to the public's safety are "fairly supported by the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.'" *Id.* at *9 (quoting *Heller*, 554 U.S. at 627); *see also id.* at *39 (Kavanaugh, J., concurring) (same).[7] Defendants

[6] *See also Bruen*, 2022 WL 2251305, at *38-*39 (Kavanaugh, J., concurring) (emphasizing the "limits of the Court's decision," and repeating *Heller*'s assurances that that "the Second Amendment allows a variety of gun regulations," that the "Second Amendment is not unlimited," and that the Second Amendment is "not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purposes" (quoting *Heller*, 554 U.S. at 626-627, 636) (quotation marks omitted)).

[7] As the Fourth Circuit has observed, while *Heller* "invoked Blackstone for the proposition that 'dangerous and unusual' weapons have historically been prohibited, Blackstone referred to the crime of carrying

can justify them by showing that they impose a "comparable burden" on the right to armed self-defense to traditional restrictions on dangerous or unusual weapons, and are "comparably justified." *Id.* at *13. At the very least, this case still presents "serious legal questions." *Leiva-Perez v. Holder*, 640 F.3d 962, 966–67 (9th Cir. 2011).[8]

Moreover, the equitable factors that originally supported this Court's decision to enter a stay more than year ago apply with equal force today. Lifting the stay would work irreparable harm to the State and threaten the public interest by leading to an influx of dangerous assault weapons that would be difficult to remove from the State if the challenged provisions are ultimately upheld. *See* Defs.' Emergency Mot. at 20-21. This is not a matter of "speculation and conjecture," Pls.' Mot. at 7, as the State's prior

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'dangerous *or* unusual weapons.'" *Kolbe v. Hogan*, 849 F.3d 114, 131 n.9 (4th Cir. 2017) (en banc) (quoting 4 Blackstone 148-149 (1769)).

[8] For the reasons discussed above, the district court's brief historical analysis does not support a contrary conclusion. *See supra* pp. 13-14. Nor does the district court's "'*Heller* test'" support lifting the stay. Pls.' Mot. at 5. Under that test, the district court held that "modern rifles," such as the AR-15, are protected under *Heller* simply because they are "popular." *Miller*, 542 F. Supp. 3d at 1023. Even assuming that the "plain text of the Second Amendment *presumptively* protects" the arms regulated by the AWCA because there are many of them in circulation, Pls.' Mot. at 5 (emphasis added), *Bruen* entitles Defendants to justify those regulations by reference to appropriate historical analogues.

experience with large-capacity magazines confirms, *see* Defs.' Emergency Mot. at 20. At the same time, any burden on Plaintiffs is minimized by the undeniable fact that they have access to a range of other legal firearms—including California-compliant AR-15 platform rifles—to possess for lawful purposes like self-defense. *Id.* at 21; *see also Bruen*, 2022 WL 2251305, at *13 (reiterating that "individual self-defense is the *central component*' of the Second Amendment right" (quotation marks omitted)).

Finally, the same considerations that support vacating the district court's judgment and remanding counsel against resolving this case in this Court on an expedited basis. *See supra* pp. 10-15. Vacatur and remand would promote the orderly administration of justice and resolution of critical Second Amendment issues, rather than requiring this Court to answer a number of important question about how *Bruen* should be applied in the first instance and resolving complicated historical questions on a truncated record. And it would be consistent with what this Court has done in other cases raising weighty Second Amendment issues. *See supra* p. 15.

CONCLUSION

The Court should vacate the district court's judgment, remand this case for further proceedings in light of *Bruen*, and deny Plaintiffs' motion to lift the stay of the district court's judgment or order expedited briefing as moot.

Dated: July 11, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Opposition to Motion to Lift Stay and Motion to Vacate and Remand for Further Proceedings complies with the type-volume limitation of Ninth Circuit Rules 27-1 and 32-3 because it contains 4,073 words. This document complies with the typeface and the type style requirements of Federal Rule of Appellate Procedure 27 because it has been prepared in a proportionally spaced typeface using 14-point font.

Dated: July 11, 2022 s/ John D. Echeverria

CERTIFICATE OF SERVICE

Case Name: ***James Miller, et al. v. Rob Bonta, et al.*** Case No. **21-55608**

I hereby certify that on July 11, 2022, I electronically filed the following document with the Clerk of the Court by using the CM/ECF system:

OPPOSITION TO MOTION TO LIFT STAY AND MOTION TO VACATE AND REMAND FOR FURTHER PROCEEDINGS

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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

Executed on July 11, 2022, at San Francisco, California.

Vanessa Jordan	s/ Vanessa Jordan
Declarant	Signature