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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

MAURO CAMPOS; SKYLER CALLAHAN-
MILLER; FIVE FIVE SIX INC., dba
FIREARMS UNKNOWN; DIMITRIOS
KARRAS; PWGG L.P., dba POWAY
WEAPONS & GEAR & PWG RANGE; JOHN
PHILLIPS; SAN DIEGO GUN OWNERS
PAC; CALIFORNIA GUN RIGHTS
FOUNDATION; SECOND AMENDMENT
FOUNDATION; FIREARMS POLICY
FOUNDATION; and FIREARMS POLICY
COALITION, INC.,

Petitioners and Plaintiffs,

v.

ROB BONTA, in his official capacity as
Attorney General of California; BRENT E.
ORICK, in his official capacity as Director of
the California Department of Justice Bureau of
Firearms; and CALIFORNIA DEPARTMENT
OF JUSTICE,

Respondents and
Defendants.

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County of San Diego

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Clerk of the Superior Court
By Adriana Ives Anzalone, Deputy Clerk

Case No.: 37-2020-00030178-CU-MC-CTL

PETITIONERS AND PLAINTIFFS'
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY, INJUNCTIVE, AND
OTHER RELIEF

Date: July 22, 2022
Time: 1:30 p.m.
Department: 64

Hon. John S. Meyer

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I. INTRODUCTION

Defendants and Respondents (collectively “DOJ”)¹ exploited the COVID-19 pandemic as an opportunity to unlawfully suspend – and thereby violate – the statutes and regulations requiring DOJ to conduct background checks within the first 10 days of a firearm transaction. This case was brought to end these illegal delays and to prevent them from recurring.

California law imposes a 10-day waiting period on most firearm transactions. Penal Code §§ 26815(a) & 27540(a). The waiting period is imposed (in part) so that state authorities can conduct a background check before a firearm is delivered. The law further requires dealers to keep a register or record of each electronic or telephonic transfer. *See* Penal Code § 28100, *et seq.* As part of that process, dealers utilize DOJ’s Dealer Record of Sale (“DROS”) Entry System (“DES”), a web-based system that transmits firearm transaction applications to DOJ for review and tells dealers when they can deliver a firearm to a transferee.

California law allows DOJ to delay delivery of a firearm beyond the 10-day waiting period only if a background check conducted within the initial 10-day window affirmatively shows that the purchaser might be prohibited from possessing a firearm – based on their mental health record, their criminal record, or because they have already purchased a handgun in the previous 30 days – but the DOJ has not yet confirmed the potential disqualifier. Penal Code § 28220(f)(1)–(3). In that case, DOJ has up to 30 days from the date of application to resolve the background check; the transferee is entitled to take possession of the firearm as soon as their background check is complete, or at the end of 30 days, whichever is sooner – presuming the check has not revealed that they are in fact prohibited from possessing firearms under state or federal law. *Id.*, at (f)(4). DOJ has no authority to delay firearm transactions for reasons not specified in the statute.

DOJ implemented 11 CCR § 4230 (“Section 4230”) to make DES operate within these statutory constraints. As part of this scheme, DOJ assigns a “status” in DES to a proposed firearm transaction. New applications are marked “Pending” in DES “when the purchaser’s eligibility is

¹ Defendants and Respondents include Attorney General Rob Bonta and Bureau of Firearms Director Brent E. Orick (both sued in their official capacities), and the California Department of Justice. This brief refers to Defendants and Respondents collectively as “DOJ” for clarity.

1 under review during the 10-day waiting period.” 11 CCR § 4230(b)(2)(A). If DOJ “determines
2 the firearm purchaser . . . is not prohibited by state or federal law from purchasing or possessing
3 firearms, immediately following the conclusion of the 10-day waiting period, the status of the DES
4 transaction record status will change from ‘Pending’ to ‘Approved.’” 11 CCR § 4230(a) (emphasis
5 added). Approved purchasers are entitled to take possession of their firearm at the end of the 10-
6 day waiting period. *Id.* If, however, DOJ is unable to determine the purchaser’s eligibility during
7 the 10-day waiting period, the transaction may be assigned a “Delayed” status. 11 CCR §
8 4230(b)(2)(B). In sum, DOJ’s regulations require it to allow dealers to transfer a firearm
9 immediately following the conclusion of the 10-day waiting period, absent an affirmative
10 determination that the person is prohibited from possessing firearms *or* that the transaction is
11 delayed to resolve a suspected prohibition based on one of the three expressly enumerated
12 statutory criteria in Section 28220(f)(1)(A).

13 In early April 2020, DOJ released a statement claiming that Section 28220 gave it general
14 authority to expand the statutory 10-day waiting period for all firearm transactions, up to 30 days.
15 Citing reduced staffing due to the COVID-19 pandemic, DOJ advised that background checks may
16 no longer be performed during the initial 10-day waiting period. In the ensuing months, as firearm
17 demand increased in light of widespread civil unrest, DOJ failed to conduct background checks
18 within the initial 10-day period as required, and they delayed over 220,000 transactions beyond the
19 10-day waiting period due to claimed administrative burden – not one of the bases authorized by
20 Section 28220. To accomplish this, DOJ kept transactions in a “Pending” status in DES after the
21 expiration of the 10-day waiting period to prevent dealers from transferring firearms to lawful
22 purchasers in violation of Section 4230. In short, DOJ conducted background checks when it got
23 around to it, despite what the requirements in Penal Code § 28220 and 11 C.C.R. § 4230 say.

24 Pursuant to that policy, DOJ delayed approximately one-third of the nearly 700,000 firearm
25 transactions it processed between March and August 2020. Over 95 percent of these 224,549
26 transactions were ultimately approved within the 30-day period; only 1.6 percent of transactions
27 were denied. These delays were significant: The average length of delay was three days, and over
28 50,000 transactions were delayed for five days or more.

1 This was unlawful. DOJ has no power to suspend the law in this manner. “An
2 administrative agency has only those powers conferred on it by statute, and may not exceed them.”
3 *Fireman’s Fund Ins. Companies v. Quackenbush*, 52 Cal.App.4th 599, 605 (1997). DOJ’s policy
4 and practice of using DES to maintain applications in a “Pending” status after the statutory 10-day
5 waiting period has expired, without having approved, delayed, or denied the application, violates
6 the law and must be enjoined. Regulators constantly deal with crises of varying types and degrees.
7 But the California Supreme Court has unanimously confirmed that regulators may not respond to
8 those crises by ignoring the statutory constraints imposed upon them by the Legislature. *Ass’n for*
9 *Retarded Citizens v. Dep’t of Developmental Servs.*, 38 Cal.3d 384, 395 (1985). Plaintiffs are
10 entitled to relief to enjoin DOJ’s unlawful policy and compel DOJ to follow California law.

11 II. FACTUAL BACKGROUND

12 A. California’s Statutes And DOJ’s Own Regulations Require DOJ To Conduct 13 Background Checks Within The First 10 Days Following A Firearm Transfer Application And The Firearm To Be Released Absent a Permissible Delay or Denial.

14 California imposes a 10-day waiting period before a buyer, transferee, or loanee can take
15 possession of their firearm. Penal Code §§ 26815(a); 27540(a). The waiting period is
16 implemented by restricting firearms dealers’ authority to deliver a firearm. This waiting period is
17 imposed (in part) so that state authorities can conduct a background check before a firearm is
18 delivered. *See Silvester v. Harris*, 843 F.3d 816, 823–24 (9th Cir. 2016). Firearm transaction
19 applications are processed through the DOJ’s Dealer Record of Sale Entry System, or “DES” – the
20 computerized, point-of-sale application system that firearms dealers use to submit firearm
21 transaction applications to the Bureau.²

22 In California, all non-exempt individuals – i.e., ordinary State citizens – must purchase or
23 otherwise transfer and receive firearms through a licensed firearms dealer. Penal Code §§ 27545,
24 28050. Whether a proposed acquisition involves a purchase or transfer, the person seeking to
25 acquire a firearm is subject to a background check conducted by the DOJ. *See* Penal Code §

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28 ² Cal. Dep’t of Justice, *DROS Entry System Log On*, <https://des.doj.ca.gov/login.do>.

1 28220. However, the background check need not be completed for the firearm to ultimately be
2 transferred. *See* Penal Code § 28220(f)(4).

3 When DOJ receives a DROS application, it is required to review state and federal
4 databases to determine whether a prospective buyer is prohibited from possessing, receiving,
5 owning, or purchasing a firearm. Penal Code § 28220(a)-(b). The background check focuses on
6 the purchaser's criminal record and mental health history (to determine whether they are
7 *prohibited* from possessing a firearm under state or federal law). *See id.* A large percentage of
8 background checks are complete within the first day (20% are automatically approved within an
9 hour or two), and the overwhelming percentage of applications – over 99% – are ultimately
10 approved. *Silvester v. Harris*, 41 F.Supp.3d 927, 953, 954 (E.D. Cal. 2014) (finding that over 99%
11 of applications were approved each year during the period 2010-2014).

12 California law specifies the conditions allowing DOJ to delay a firearm transfer or restrict
13 delivery of a firearm beyond the 10-day period after the DROS application is submitted. Under
14 Section 28220(f), DOJ has authority to delay a firearm transaction beyond the 10-day waiting
15 period *only* in three limited and expressly enumerated circumstances where its background check
16 affirmatively reveals potentially disqualifying information and DOJ is “unable to ascertain”
17 whether the purchaser is actually prohibited or ineligible before the waiting period concludes:

18 The department shall immediately notify the dealer to delay the transfer of the
19 firearm to the purchaser if the records of the department, or the records available to
20 the department in the National Instant Criminal Background Check System,
indicate one of the following:

21 (i) The purchaser has been taken into custody and placed in a facility for mental
22 health treatment or evaluation and may be a person described in Section 8100 or
23 8103 of the Welfare and Institutions Code and the department is unable to ascertain
24 whether the purchaser is a person who is prohibited from possessing, receiving,
owning, or purchasing a firearm, pursuant to Section 8100 or 8103 of the Welfare
and Institutions Code, prior to the conclusion of the waiting period described in
Sections 26815 and 27540.

25 (ii) The purchaser has been arrested for, or charged with, a crime that would make
26 him or her, if convicted, a person who is prohibited by state or federal law from
27 possessing, receiving, owning, or purchasing a firearm, and the department is
unable to ascertain whether the purchaser was convicted of that offense prior to the
conclusion of the waiting period described in Sections 26815 and 27540.

28 (iii) The purchaser may be a person described in subdivision (a) of Section 27535
[who has purchased a handgun in the prior 30-day period], and the department is

1 unable to ascertain whether the purchaser, in fact, is a person described in
2 subdivision (a) of Section 27535, prior to the conclusion of the waiting period
 described in Sections 26815 and 27540.

3 Penal Code § 28220(f)(1)(A).

4 When DOJ’s background check uncovers specific, potentially prohibiting information, it is
5 required to “immediately notify the dealer” of the reason for the delay and inform the purchaser
6 about the delay. *Id.* at (f)(1)(A), (f)(1)(B), (f)(2). If DOJ subsequently determines a purchaser is
7 not prohibited, it is required to “immediately notify” the dealer so it can transfer the firearm to the
8 purchaser. *Id.* at (f)(3)(A). If DOJ is “unable to ascertain the final disposition of the arrest or
9 criminal charge, or the outcome of the mental health treatment or evaluation, or the purchaser’s
10 eligibility to purchase a firearm” within 30 days from the date of purchase, it must “immediately
11 notify” the dealer that it can transfer the firearm. *Id.* at (f)(4). In short, Section 28220 allows DOJ
12 to delay the transfer of a firearm beyond the 10-day waiting period only if the background check
13 conducted in those first 10 days reveals that a purchaser may be prohibited or ineligible, and that
14 total period cannot exceed 30 days from the date of purchase.

15 Consistent with this statutory requirement, DOJ’s own regulations provide that, when a
16 dealer submits a firearm transaction through DROS, the DES transaction record is set to “Pending”
17 while DOJ conducts a background check. 11 CCR § 4230(a). And “[a] ‘Pending’ status shall be
18 designated when the purchaser’s eligibility is under review during the 10-day waiting period.” *Id.*
19 at (b)(2)(A) (emphasis added). Further, “[a] ‘Delayed’ status shall be designated when the
20 Department is unable to determine the purchaser’s eligibility within the 10-day waiting period.”
21 *Id.* at (b)(2)(B) (emphasis added). DOJ may be unable to make an eligibility determination for a
22 variety of reasons. For example, DOJ analysts may need to investigate the disposition of a
23 criminal arrest or review mental health records to determine whether a purchaser is eligible to own
24 and possess a firearm. *See Silvester*, 41 F.Supp.3d at 951–52.

25 Section 4230 further commands that, “[i]f the Department determines the firearm
26 [purchaser] is not prohibited by state or federal law from purchasing or possessing firearms,
27 immediately following the conclusion of the ten-day waiting period, the status of the DES
28

1 transaction record will change from ‘Pending’ to ‘Approved.’” 11 CCR § 4230(a) (emphasis
2 added).

3 In sum, there is no basis for DOJ to leave an individual in a “Pending” status after the
4 expiration of the 10-day waiting period and prevent licensed dealers from transferring a firearm.
5 The only basis for DOJ to delay a transaction – and assign it a “Delayed” status in DES – is DOJ’s
6 determination, after performing the background check within the first 10 days, that it is unable to
7 ascertain whether a proposed purchaser or transferee is prohibited or ineligible based on specific,
8 identifiable information that meets one of the statutorily defined circumstances.

9 **B. DOJ Seizes On The COVID-19 Pandemic To Suspend Section 28220 And Use The**
10 **DES System To Extend The Waiting Period For Up To 30 Days.**

11 Since early in the COVID-19 pandemic, DOJ acknowledged that public health emergency
12 does not suspend its legal obligations and provided accommodations for employees to continue
13 their work safely. In a March 16, 2020 memorandum setting forth the agency’s remote work
14 policy, DOJ emphasized that it “maintains its responsibility to serve the People of California
15 despite cases of emergency, including public health crises. Thus, we recognize that ensuring the
16 continuity of critical departmental functions is necessary and may require temporary modification
17 of work arrangements.” Cal. Dep’t of Justice, *Emergency Teleworking Policy – Coronavirus*
18 *(COVID-19)* (March 16, 2020). To that end, DOJ’s Emergency Teleworking Policy was meant “to
19 serve multiple purposes, including ensuring critical Departmental functions continue; reducing on-
20 site staff throughout statewide offices; providing employees with flexible work options; and
21 addressing school closures occurring statewide.” *Id.*

22 In April 2020, however, DOJ struck a different chord when it came to firearms and
23 announced that the pandemic was causing it to, in essence, suspend the duties imposed on it by
24 Section 28220. Because of the logistical difficulties imposed by COVID-19, DOJ said it may or
25 may not conduct background checks within 10 days of receiving a firearm transaction application
26 as required under Section 28220, and DOJ would henceforth take up to 30 days to process
27 transactions. In a notification sent to firearms dealers through the DROS system and published on
28

1 the Bureau of Firearms website, DOJ claimed that Section 28220(f) gives it the authority to delay a
2 firearm transaction up to 30 days for any reason (or no reason at all). The notification states:

3 Under Penal Code section 28220(f)(4), the Department of Justice (DOJ) has up to
4 30 days to complete background checks on purchasers of firearms and ammunition.
5 Prior to the COVID-19 pandemic, DOJ typically completed these checks within
6 Penal Code Section 26815(a)'s 10-day waiting period. COVID-19 protective
7 measures have impacted the ability to increase the personnel resources in the DROS
8 unit to address the recent sustained increase in firearms and ammunitions
9 transactions without compromising the health and safety of our employees and the
community. As a result, firearms and ammunition dealers and purchasers should
know that as DOJ employees continue to perform the statutorily required
background checks throughout the COVID-19 pandemic, circumstances may
compel that background checks are completed after the expiration of the 10-day
waiting period. DOJ will continue to strive to provide the best service and
complete these checks in the shortest time possible.

10 Cal. Dep't of Justice, Bureau of Firearms, *Firearms and Ammunition Purchaser Information*,
11 <https://oag.ca.gov/firearms>; *see also* Duvernay Decl., Ex. 1, DOJ Resp. SI 2.

12 DOJ failed to conduct background checks within 10 days as required by Section 28220 and
13 kept purchasers in a "Pending" status – preventing the dealer from transferring the firearm to the
14 recipient – until eventually conducting the check it was supposed to conduct in the first 10 days.
15 In doing so, DOJ unlawfully delayed delivery of firearms to hundreds of thousands of law-abiding,
16 responsible Californians who are eligible – and constitutionally entitled – to possess firearms
17 under state and federal law.

18 **C. DOJ Deploys Its Unlawful Policy To Delay Over 220,000 Firearm Transactions.**

19 DOJ used the DES system to delay transactions by preventing dealers from delivering
20 firearms to purchasers. Dealers are not allowed to deliver a firearm until DOJ "releases" a
21 transaction in the system – either because it affirmatively approved the transaction or the
22 purchaser's status remains "undetermined" after 30 days under section 28220(f)(4). 11 CCR §
23 4230(b)(1); *see also* 11 CCR § 4230(b)(2). And so long as a transaction's status is "Pending," the
24 DES system does not provide the dealer with an option to "Deliver Gun" – the transaction remains
25 stalled. When DOJ releases a transaction, the DES system allows the dealer to select a button to
26 "Deliver Gun" and complete delivery of the firearm. Under its policy, DOJ used the DES system
27 to delay transactions by leaving them in limbo. DOJ left hundreds of thousands of transactions
28 "Pending" beyond the 10-day waiting period while background checks remain unperformed, which

blocks dealers from delivering the firearm. Duvernay Decl., Ex. 1, DOJ Resp. SI 1, 10, 13. And DOJ admits that it did not notify delayed purchasers or the subject firearms dealers that the transactions would be delayed past the 10-day waiting period or inform them of the reason for the delay. *Id.*, DOJ Resp. SI 7, 11, 12; *id.*, Ex. 2, DOJ Resp FI at 9:14–20.

Firearm Transactions, March 4–Aug. 27, 2020 ³	
670,032	Total Applications
233,376	Not complete within 10 days
8,827	Statutorily delayed within 10 days
6,855	Statutorily delayed after 10 days
214,082	Approved after 10 days
3,612	Denied after 10 days

Duvernay Decl., Ex. 1, DOJ Resp. SI 1. Thus, DOJ delayed 224,549 transactions without complying with Section 28220(f), which amounts to 33.51 percent of all DROS applications submitted between March 4 and August 27, 2020. Over 95 percent of these applications were ultimately approved within the thirty-day period – and just 1.6 percent of the transactions were denied. Based on DOJ’s discovery responses, the average length of delay was 13 days, over 75,000 transactions were delayed past 13 days, and more than 50,000 transactions stretched past 15 days.⁴

Plaintiffs’ delays were illustrative. On April 10, 2020, Plaintiff Mauro Campos submitted an application to purchase a handgun and a rifle through Firearms Unknown. Ver. Compl., ¶ 47. Despite the fact that DOJ knew⁵ that Campos was not prohibited from purchasing a firearm – he holds a current and valid certificate of eligibility from DOJ, he is a DOJ-certified firearms safety

³ Total transaction numbers exclude 12,920 applications that were cancelled or that were rejected because of an issue with the purchaser’s DMV records. *See* Duvernay Decl., Ex. 1, DOJ Resp. SI 1, fn. 1.

⁴ Specifically, the arithmetic mean of the number of days-to-decision on all DROS transactions was 12.95 days, 78,146 transactions were delayed past 13 days, and 56,625 stretched past 15 or more days. Duvernay Decl., ¶ 6 (detailing calculations from DROS transaction data).

⁵ DOJ has access to, and indeed is required to compile and maintain, many databases relevant to individuals’ criminal history and firearms eligibility. *See, e.g.*, Penal Code §§ 11105, 11106.

1 instructor, and he has firearms registered in the State’s Automated Firearms System (or “AFS”)
2 – Campos’ transaction was delayed until April 28 (18 days), when DOJ permitted Firearms
3 Unknown to release the firearms through the DROS system. *Id.*, ¶¶ 15, 47. Campos’ status
4 remained “Pending” after the expiration of the 10-day waiting period, and DOJ did not notify
5 Campos or Firearms Unknown that the transaction would be delayed past the 10-day waiting
6 period or inform them of the reason for the delay. *Id.*

7 On April 9, 2020, Plaintiff Skyler Callahan-Miller submitted an application to purchase a
8 handgun through Firearms Unknown. This was Callahan-Miller’s first handgun purchase; he
9 bought the firearm to defend the home he shares with his wife, who currently serves in the United
10 States Marine Corps. Ver. Compl., ¶ 48. Callahan-Miller’s transaction was delayed until April 25
11 (16 days), when DOJ permitted Firearms Unknown to release the firearm through the DROS
12 system. *Id.*, ¶ 48. Like Campos, Callahan-Miller’s status remained “Pending” after the expiration
13 of the 10-day waiting period, and DOJ did not notify Callahan-Miller or Firearms Unknown that the
14 transaction would be delayed or inform them of the reason for the delay. *Id.*

15 Plaintiffs Firearms Unknown and PWG likewise faced significant delays, which impacted
16 hundreds of transactions for their customers. *Id.*, ¶¶ 49, 50. And the five firearms advocacy
17 organizations⁶ who are Plaintiffs have members – including firearms dealers and individual
18 firearm purchasers or transferees – that have been harmed by DOJ’s policy. *Id.*, ¶¶ 21–25.

19 As of May 27, 2022, the challenged policy remains in effect and is posted on DOJ’s Bureau
20 of Firearms website. Cal. Dep’t of Justice, Bureau of Firearms, <https://oag.ca.gov/firearms>; see
21 Duvernay Decl., Ex. 4, pp. 4–5.

22 III. ARGUMENT

23 A. Petitioners And Plaintiffs Are Entitled To A Writ Of Mandate And Declaratory 24 Judgment To Address And Remedy DOJ’s Defiance Of The Waiting-Period Laws.

25 DOJ has failed to comply with the waiting period laws and adopted a policy and practice of
26 delaying firearm transactions beyond the 10-day waiting period, which included its use of the

27
28 ⁶ San Diego Gun Owners PAC; California Gun Rights Foundation; Second Amendment Foundation; Firearms Policy Foundation; and Firearms Policy Coalition, Inc.

1 DROS Entry System to leave transactions in a “Pending” after the expiration of the 10-day waiting
2 period to prevent dealers from transferring firearms to lawful purchasers. As set forth in the
3 petition and complaint, petitioners and plaintiffs seek relief through writ of mandamus and a
4 declaratory judgment to address and remedy DOJ’s violations on the following basis:

5 Writ of Mandate. Petitioners request a writ of mandate:

- 6 (1) Directing DOJ to cease its policy and practice of delaying firearm transactions
7 beyond the 10-day waiting period, including but not limited to the use of the
8 DROS Entry System, and directing DOJ to approve applications after the
9 expiration of the 10-day waiting period, absent a statutory basis to deny or delay
10 the application as permitted by Penal Code sections 26815(a), 27540(a), and
11 28220.
- 12 (2) Directing DOJ to cease its policy and practice of delaying firearm transactions
13 beyond the 10-day waiting period, and directing DOJ to permit firearms dealers
14 to deliver firearms to purchasers and transferees after 10 days, except where
15 DOJ complies with the statutes to extend the 10-day waiting period under three
16 specific and enumerated circumstances set forth in Penal Code section
17 28220(f)(1)(A).
- 18 (3) Directing DOJ to “immediately notify the dealer” of the reason(s) for any delay
19 and inform a purchaser about the delay as required by Penal Code section 28220
20 subdivisions (f)(1)(A), (f)(1)(B), (f)(2).

21 Declaratory Judgment. Plaintiffs request a declaratory judgment:

- 22 (1) That DOJ may not use the DROS Entry System to leave an individual in a
23 “Pending” status after the expiration of the 10-day waiting period under Penal
24 Code section 28220 and 11 CCR section 4230.
- 25 (2) That DOJ may not delay firearm transfers beyond the initial 10-day waiting
26 period except in the three specific and enumerated circumstances set forth in
27 Penal Code section 28220(f)(1)(A).

28 *See Ver. Compl. at 20:1–21:4 (Prayer for Relief).*

29 **B. Legal Standard.**

30 Writ of Mandate. A writ of mandate “may be issued by any court . . . to compel the
31 performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or
32 station” Code Civ. Proc. § 1085 (a). To obtain such a writ, the petitioner must show (1) a
33 clear, present, ministerial duty on the part of the respondent; and (2) a clear, present, and beneficial
34 right in the petitioner to the performance of that duty. *Santa Clara Cty. Counsel Attys. Ass’n v.*
35 *Woodside*, 7 Cal.4th 525, 539–40 (1994). “Mandamus relief is also available to ‘correct those acts
36 and decisions of administrative agencies which are in violation of law.’” *Transdyn/Cresci v. City*

1 & *Cty. of San Francisco*, 72 Cal.App.4th 746, 752 (1999) (quoting *Bodinson Mfg. Co. v. Cal.*
2 *Emp’t Comm’n*, 17 Cal.2d 321, 329 (1941)). And “[i]t is well settled that mandamus will lie to
3 correct an abuse of discretion by a public official or agency.” *Cal. Hosp. Ass’n v. Maxwell-Jolly*,
4 188 Cal.App.4th 559, 570 (2010); accord *Great W. Sav. & Loan Assn. v. City of Los Angeles*, 31
5 Cal.App.3d 403, 413 (1973) (mandamus is appropriate “[w]here a statute or ordinance clearly
6 defines the specific duties or course of conduct that a governing body must take, that course of
7 conduct becomes mandatory and eliminates any element of discretion”).

8 Declaratory Judgment. A declaratory judgment is likewise appropriate to address and
9 correct DOJ’s failure to comply with the waiting-period laws. “Declaratory relief is appropriate to
10 obtain judicial clarification of the parties’ rights and obligations under applicable law,” which
11 includes the authority to address policies of administrative agencies that violate state law.
12 *Californians for Native Salmon etc. Ass’n v. Dep’t of Forestry*, 221 Cal.App.3d 1419, 1427, 1429–
13 30 (1990); *see also, e.g., Alameda Cty. Land Use Ass’n v. City of Hayward*, 38 Cal.App.4th 1716,
14 1723 (1995) (“An action for declaratory relief lies when the parties are in fundamental
15 disagreement over the construction of particular legislation, or they dispute whether a public entity
16 has engaged in conduct or established policies in violation of applicable law.”). In short,
17 declaratory relief is “the proper remedy when it is alleged an agency has a policy of ignoring or
18 violating applicable laws.” *Venice Town Council, Inc. v. City of Los Angeles*, 47 Cal.App.4th
19 1547, 1566 (1996).

20 **C. DOJ Has No Authority To Effectively Suspend The Law Based On Increased**
21 **Administrative Burden.**

22 DOJ violated California law by imposing delays that prevent law-abiding, responsible
23 Californians from taking possession of their firearms in violation of the state’s waiting period laws
24 and DOJ’s own regulations. Specifically, DOJ claims that Penal Code section 28220 provides
25 DOJ “up to 30 days” – rather than the standard 10-day waiting period – to complete background
26 checks. It does not.

27 DOJ’s authority to delay transactions is based solely on meeting the three criteria outlined
28 in Penal Code § 28220(f)(1)(A). If, during the 10-day waiting period, the “records of the

1 department, or the records available to the department in the National Instant Criminal Background
2 Check System, indicate one of the” three specifically enumerated circumstances, Penal Code §
3 28220(f)(1)(A) – i.e., that the purchaser (1) may be prohibited based on their mental health record,
4 (2) may be prohibited based on their criminal record, or (3) may be ineligible based on the one-
5 handgun-every-30-days limitation – then, and only then, may DOJ delay the transaction and
6 change their DES status to “Delayed,” which allows for a total of 30 days from the initial
7 acceptance of the application to investigate further and determine the eligibility of the purchaser.
8 The regulations governing DES align with Section 28220. Under Section 4230, the DES status is
9 set to “Pending” “when the purchaser’s eligibility is under review during the 10-day waiting
10 period,” and the “Delayed” status is reserved for when DOJ “is unable to determine the
11 purchaser’s eligibility within the 10-day waiting period.” 11 CCR § 4230(b)(2)(A), (B).

12 Thus, DOJ is required to change the status of a “Pending” application to “Approved”
13 immediately after the expiration of the 10-day waiting period absent a determination that the
14 individual is prohibited by state or federal law from purchasing or possessing firearms. And DOJ
15 may only extend this period if the background check performed within the first 10 days gives DOJ
16 specific reason to believe that the purchaser may be prohibited or ineligible due to one of Section
17 28220’s three enumerated disqualifiers.

18 In short, nothing in Section 28220 provides DOJ authority or discretion to extend the
19 period in which to conduct background checks because it may be short-staffed or for any other
20 administrative purpose. Rather, it affirmatively requires that DOJ conduct and complete the
21 background check in 10 days except where it encounters potentially disqualifying information
22 during the background check. And even then, the statute provides strict notice requirements so
23 that firearms dealers and purchasers are kept informed of the status of the transaction. Penal Code
24 § 28220(f)(1)(A), (f)(1)(B), (f)(2), (f)(3)(A)–(B), (f)(4).

25 DOJ has disregarded these requirements. Under the policy announced in April 2020, DOJ
26 no longer considers itself obligated to conduct a background check within the first 10 days of a
27 purchase transaction or transfer. If DOJ doesn’t get around to the check within 10 days, it simply
28 leaves a proposed transaction in a “Pending” status, thereby preventing the transfer.

1 This practice violates the statutory scheme as well as DOJ's own regulations.

2 The difficulties associated with the COVID-19 pandemic do not provide a basis for DOJ to
3 violate the laws governing its processing of firearms transactions. In *Ass'n for Retarded Citizens*,
4 the Director of the Department of Developmental Services responded to a potential budget
5 shortfall by issuing "spending directives" that dictated specific cutbacks to services provided to
6 disabled individuals through the agency's regional centers. 38 Cal.3d at 390. Under the
7 Lanterman Act, however, DDS lacked authority to direct the regional centers' operations or
8 control how they provided services. *Id.* at 389, 392. A unanimous California Supreme Court
9 recognized that the regulator was in a "difficult position," but it could not avert its statutory
10 obligations. *Id.* at 394–95. Rather than take the law into its own hands, the regulator could have
11 "sought . . . relief from the Legislature," *id.* at 395, which did not happen here.

12 It is no defense that the pandemic caused increased administrative burdens. California law
13 provides a method for suspending laws based on emergencies like the COVID-19 pandemic.
14 Governor Newsom has relied on the Emergency Services Act, Gov. Code § 8550, *et seq.*, to
15 suspend many laws and impose emergency orders based on the exigencies associated with the
16 pandemic. But the Governor did not suspend Penal Code section 28220, surely because it would
17 have invited a wave of litigation over whether an extended 30-day (or more) delay violates the
18 Second Amendment. Cf. *S. Bay United Pentecostal Church v. Newsom*, — U.S. —, 141 S. Ct.
19 716, 718 (2021) (Statement of Gorsuch, J.) ("Even in times of crisis – perhaps *especially* in times
20 of crisis – we have a duty to hold governments to the Constitution.").

21 If the administrative burden associated with the pandemic is deemed sufficient to excuse
22 DOJ's compliance with its statutory and regulatory obligations, all agencies will be emboldened to
23 leverage future crises (or future waves of Covid) to bend the rules in favor of bureaucratic ease.
24 But compliance with the law is not optional.

25 At bottom, DOJ's actions run counter to the well-established principle that a state agency
26 cannot "substitute its judgment" for the Legislature's by "administratively rewrit[ing]" a statute.
27 *Plan. & Conservation League v. Dep't of Fish & Game*, 54 Cal.App.4th 140, 490 (1997). And an
28 agency cannot "under the guise of a rule . . . vary or enlarge the terms of" a statute, even when

1 adopting a policy that lacks the formality of a regulation. *Agnew v. State Bd. of Equalization*, 21
2 Cal.4th 310, 321 (1999). DOJ is not permitted to cast aside statutory mandates to make policy in
3 the dark: “A statute may impose on a government agency what first appears to be a technical
4 formality, but such a requirement may serve to check delegations of power both to and by the
5 agency Ignoring a statutory mandate nullifies the Legislature’s valid purposes and results in
6 tangible harm. If a statute requires an agency to dot its ‘i’s’ and cross its ‘t’s,’ the Legislature’s
7 will must be done.” *Marquez v. Med. Bd. of Cal.*, 182 Cal.App.4th 548, 550–51 (2010).

8 Because DOJ does not have the authority to alter or amend the waiting-period statutes, or
9 enlarge or impair their scope, it is this Court’s obligation to strike down DOJ’s practice of delaying
10 firearm transfers by holding transactions in a “Pending” status after the expiration of the 10-day
11 waiting period. *See Morris v. Williams*, 67 Cal.2d 733, 748 (1967); *Cal. Ass’n of Psychology*
12 *Providers v. Rank*, 51 Cal.3d 1, 11 (1990). “An administrative agency has only those powers
13 conferred on it by statute, and may not exceed them.” *Fireman’s Fund Ins. Companies v.*
14 *Quackenbush*, 52 Cal.App.4th 599, 605 (1997). And “[a] governmental agency that acts outside of
15 the scope of its statutory authority acts ultra vires and the act is void.” *Cal. Dui Lawyers Ass’n v.*
16 *Cal. Dep’t of Motor Vehicles*, 20 Cal.App.5th 1247, 1264 (2018) (citation omitted) ; *Dep’t of*
17 *Parks & Recreation v. State Pers. Bd.*, 233 Cal.App.3d 813, 824 (1991) (any action taken by an
18 agency “in excess of, or in violation of, the powers conferred upon it” is “void”).

19 DOJ adopted and applied a policy that defies both Penal Code section 28220 and Section
20 4230. The Court should issue a declaratory judgment confirming that the policy is void and issue a
21 writ of mandamus directing DOJ to cease its policy.

22 **D. The Court Should Issue Injunctive Relief To Ensure DOJ Complies With Its**
23 **Statutory Obligations.**

24 Injunctive relief is appropriate and necessary to restrain DOJ from enforcing a policy that
25 exceeds their authority. *Associated Cal. Loggers, Inc. v. Kinder*, 79 Cal.App.3d 34, 45 (1978)
26 (injunctive relief is appropriate where a court finds that a “public official’s action was not within
27 the scope of the statute,” or “where the public official's action exceeds his power.”); *see also, e.g.,*
28 *Bueneman v. City of Santa Barbara*, 8 Cal.2d 405, 407 (1937) (injunctive relief is appropriate “to

1 prevent the attempted execution of a void statute and the exercise of an office claimed to have been
2 created thereby, but in fact and in law nonexistent”); *City of San Jose v. Dep’t of Health Servs.*, 66
3 Cal.App.4th 35, 47 (1998) (injunctive relief appropriate to enjoin application of agency’s rules and
4 regulations that exceeded its authority).

5 Courts similarly recognize that “[i]njunctive relief may be granted against illegal
6 enforcement of valid statutes.” *Novar Corp. v. Bureau of Collection & Investigative Servs.*, 160
7 Cal.App.3d 1, 6 (1984) (upholding injunction and rejecting argument that it would prevent
8 exercise of public official’s duties). An injunction is likewise appropriate relief where a public
9 official’s interpretation of a statute “was both mistaken and illegal.” *Startrack, Inc. v. Cnty. of Los*
10 *Angeles*, 65 Cal.App.3d 451, 457 (1976).

11 The propriety of injunctive relief to prevent DOJ’s further defiance of the clear statutory
12 commands is particularly appropriate because DOJ’s policy prevents responsible, law-abiding
13 Californians from taking possession of their constitutionally protected property firearms when they
14 are entitled by statute to do so. The enforcement policy interferes with the Second Amendment
15 right to keep and bear arms, which is “among those fundamental rights necessary to our system of
16 ordered liberty.” *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010).⁷

17 IV. CONCLUSION

18 For the reasons set forth above, the Court should issue a writ of mandate, declaratory
19 judgment, and injunctive relief as prayed for in the petition and complaint.

20 Dated: May 27, 2022

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21
22 By 

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25
26 ⁷ In order to secure “the core right to possess a firearm for self-defense,” the Second
27 Amendment’s protections extend to “necessary,” “ancillary rights,” including the right to acquire
28 firearms. *Teixeira v. Cty. of Alameda*, 873 F.3d 670, 677–78 (9th Cir. 2017). After all, “the core
Second Amendment right to keep and bear arms for self-defense ‘wouldn’t mean much’ without
the ability to acquire arms.” *Id.* at 677 (quoting *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th
Cir. 2011)).