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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO
12 CENTRAL BRANCH

13
14 **MAURO CAMPOS et al.,**
15
Petitioner and Plaintiff,
16
v.
17
XAVIER BECERRA et al.,
18
Respondents and
19 Defendants.

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
PETITION FOR WRIT OF MANDATE**

Date: July 22, 2022
Time: 2:30 p.m.
Dept: C-64
Judge: The Honorable John S. Meyer
Action Filed: August 27, 2020

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INTRODUCTION

During the early days of the COVID-19 pandemic in California, when California also saw an extraordinary surge in firearms purchases, the statutorily required background checks for some purchasers temporarily extended beyond the 10-day waiting period to acquire a firearm. For most purchasers the added delay in clearing a background check was no more than three to five days. By July 2020, despite continued unprecedented levels of firearms sales, the California Bureau of Firearms (the Bureau) had completely resolved the backlog, which has not recurred. Without identifying any need for relief at the present time, Plaintiffs seek a writ of mandate and declaratory judgment concerning this once-in-a-century event. Plaintiffs' claims are procedurally, legally, and factually without merit and must be denied.

As a threshold matter, this Court should deny the writ of mandate because this case is moot. Even if Petitioners could state a claim, which they cannot, the Department resolved all delays in processing background check applications by July 2020. Petitioners may not obtain a writ directing the Department to take actions that were resolved long ago, and may not obtain a declaration concerning past events. This Court should decline Petitioners' invitation to issue an advisory opinion where there is no ongoing controversy and no probability of any future controversy.

Second, the Petition fails on the merits. The evidence in this case shows that the Department of Justice and its Bureau of Firearms conducted background checks throughout the pandemic in accordance with Penal Code section 28220.¹ California's legislative scheme requires the Department to perform background checks. Contrary to Petitioners' assertions, the statutory scheme does not require the Department to approve background checks after ten days without exception. Petitioners mistakenly conflate the 10-day waiting period, which begins at the time of purchase, with the background check process, which by statute can extend for up to 30 days. Where an adequate background check cannot be performed within ten days of receiving the application, such as when there was a perfect storm of a global pandemic, office closures, and a

¹All further statutory references are to the Penal Code unless otherwise indicated.

1 surge in gun sales, the statutory scheme still mandates that a background check should be
2 performed and does not require or allow the Department of Justice to approve unvetted
3 applications. Any other reading of the statute does not effectuate the clear intent of the statutory
4 scheme that background checks be conducted.

5 Finally, Plaintiffs offer no evidence to support their assertion that the Department
6 “exploited” the pandemic to delay background checks. Far from it. The undisputed evidence
7 shows that the Department diligently worked to complete the background check process as
8 quickly as possible under unprecedented and entirely unexpected conditions.

9 Accordingly, the Court should deny the petition for writ of mandate and the request for
10 declaratory relief.

11 **BACKGROUND**

12 **I. FACTUAL AND LEGAL BACKGROUND**

13 **A. The Bureau of Firearms Conducts a Background Check for Every Person 14 Who Purchases a Firearm.**

15 California has a comprehensive statutory scheme for enforcing laws that prohibit felons and
16 other prohibited people from buying, possessing, and using firearms. Each time a person
17 purchases a firearm in California from a federally licensed firearms dealer, DOJ performs a
18 background check pursuant to the terms of section 28220. California is a “point-of-contact” state,
19 meaning that it conducts background checks that meet the minimum requirements of the federal
20 background check by accessing various electronic databases. (28 C.F.R. § 25.6(d).)

21 To initiate a background check for a firearms purchase, the dealer submits a “Dealer Record
22 of Sale” (DROS) to the Department through the DROS Entry System (DES) based on information
23 provided by the purchaser. (Thompson Decl. ¶6.) Section 28220, subdivision (a), requires that the
24 Department perform a background check after receiving the DROS: “Upon submission of firearm
25 purchaser information, the Department . . . shall examine its records, as well as those records that
26 it is authorized to request . . . in order to determine if the purchaser is a person described in
27
28

1 subdivision (a) of Section 27535,² or is prohibited by state or federal law from possessing,
2 receiving, owning, or purchasing a firearm.” (§ 28220, subd. (a).)

3 The Department’s process for completing the background check under section 28220 starts
4 with an automated screening. (Thompson Decl. ¶7.) This automated screening is called the Basic
5 Firearms Eligibility Check (BFEC). (*Id.* at ¶ 8.) The BFEC checks the applicant information
6 against DMV records, and sends inquiries to various state and federal electronic databases based
7 on the purchaser’s name and date of birth, compiling the responses when the date of birth and
8 name results in an exact or close match in those databases. (*Id.*; see also *Silvester v. Harris* (E.D.
9 Cal. 2016) 843 F.3d 816, 825 [describing the process].) If no disqualifying information turns up
10 in these checks, and there are no hits in any of the databases, the application will be approved.
11 (*Ibid.*) Currently, about 14% of all DROS applications are auto-approved through the BFEC
12 process and do not need further manual review by an analyst. (Thompson Decl. ¶13.) Once an
13 auto approval occurs, the dealer is notified of the approval after ten days. (*Id.* at ¶14) Within the
14 DES, for an auto approved DROS, the dealer does not have the ability to mark the firearm as
15 “Delivered” until ten days from the submission date, unless the DROS applicant is exempt from
16 the 10-day waiting period. (*Ibid.*)

17 The applications that are not auto approved through the BFEC process—approximately
18 86% of total applications—need to be reviewed manually by an analyst. These applications are
19 placed into a queue and analysts in the Background Clearance Unit (BCU) process them in the
20 order that they are received, working on the oldest applications first. (Thompson Decl. ¶16.) An
21 analyst will review the DROS application and any database hits that may be connected to the
22 application. (*Ibid.*) If the records matched during the BFEC clearly indicate the DROS applicant
23 is not prohibited from purchasing or possessing a firearm, the analyst will approve the DROS,
24 enabling the purchaser to obtain the firearm at the conclusion of the 10-day waiting period. (*Id.*
25 ¶18.) Conversely, if the records matched during the BFEC clearly indicate the DROS applicant is

26
27
28 ² Section 27535, subdivision (a), prohibits purchasing more than one firearm during a 30-
day period.

1 prohibited from purchasing or possessing a firearm, and no further research is needed, the analyst
2 will deny the DROS. (*Ibid.*)

3 The Bureau's objective is to review DROSs within the statutory 10-day waiting period.
4 (Thompson Decl. ¶16.) The Bureau closely monitors all DROSs in the queue to ensure proper
5 personnel resources are available to process all transactions in a timely manner. (*Ibid.*)

6 The Department is sometimes unable to determine a person's eligibility before the
7 conclusion of California's mandatory 10-day waiting period, often because the person's record
8 reveals the existence of a mental health or criminal record suggesting that the buyer has a
9 potentially disqualifying mental health hold or criminal conviction. (See § 28220, subd. (f)(1)(A);
10 (Thompson Decl. ¶¶ 19-21.) For example, this can happen when an arrest or criminal charge has
11 been reported to a criminal records database, but the database shows no corresponding
12 disposition. (Thompson Decl. ¶ 24.) In such a case, the Department is unable to determine from
13 the record whether the person was convicted of the potentially prohibiting crime. (*Ibid.*) Upon
14 reviewing records, "[t]he department shall immediately notify the dealer to delay the transfer of
15 the firearm to the purchaser if the records of the department or the records available to the
16 department" indicate that the person may be disqualified from owning a firearm. (See § 28220,
17 subd. (f)(1)(A).) Section 28220, subdivision (f)(4), limits the Department to 30 days from
18 submission of the DROS to attempt to locate a disposition. (*Ibid.*) The analyst will also attempt to
19 determine missing information that is pertinent to making an eligibility determination. (*Ibid.*) For
20 example, the analyst may contact listed reporting agencies, such as courts, police departments,
21 and military tribunals, for disposition information regarding noted arrests. (*Ibid.*)

22 Throughout the review, the Department communicates with firearms dealers through DES.
23 (See Cal. Code Regs., tit. 11, § 4230, subd. (b).) After the dealer submits an application, DES will
24 show the transaction as "pending." (Thompson Decl. ¶ 9.) The regulations prohibit the firearms
25 dealer from delivering the weapon while the status states "pending." (Cal. Code Regs., tit. 11,
26 § 4230, subd. (b)(1)(C).) After review, the Department will inform the dealer through its DES
27 system that the transaction is "denied" or "approved." (§ 28220, subd. (c); Cal. Code Regs., tit.
28 11, § 4230, subd. (b)(C)(2).) If the transaction is "approved," the dealer may deliver the firearm at

1 the conclusion of the 10-day waiting period, unless the purchaser is exempt.³ (§ 4230, subd. (a).)
2 If the transaction is “denied,” the dealer is prohibited from completing the sale. (*Ibid.*) The
3 regulations provide that DOJ will indicate a “delayed status” when it “is unable to determine the
4 purchaser’s eligibility within the 10-day period.” (*Id.*, subd. (b)(2).) In practice, this occurs when
5 an analyst, manually reviewing an application in the unprocessed queue, finds an incomplete
6 record that needs additional review. (Thompson Decl. ¶¶ 19-21; see also § 28220, subd. (f).)

7 When the DROS is marked “delayed,” the Bureau mails a copy of the notification to the
8 DROS applicant stating that the DROS is delayed and explaining the process by which the DROS
9 applicant may obtain a copy of the criminal or mental health record that the Department has on
10 file. (Thompson Decl. ¶ 24.) At the same time the analyst manually marks the DROS as
11 “delayed” within the DROS System, which then updates DES with the “delayed” status. (*Ibid.*)

12 To transfer the firearm, the dealer must use the “Deliver Gun” function within DES, which
13 allows the dealer to report delivery of the firearm. (§ 4230, subds. (a), (c)-(d).) When an
14 application is “denied,” “pending,” or “delayed,” dealers do not have the option to deliver the
15 firearm.

16 **B. The COVID-19 Pandemic’s Effects Reached California in Early 2020.**

17 On March 4, 2020, Governor Gavin Newsom proclaimed a State of Emergency in
18 California as a result of the threat of COVID-19. ([https://www.gov.ca.gov/wp-](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf)
19 [content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf)> (as of June 17, 2022).) On
20 March 13, 2020, then-President Donald Trump likewise proclaimed the United States to be in a
21 state of national emergency due to the COVID-19 outbreak.

22 ([https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-](https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/)
23 [emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/](https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/)> (as of June 13, 2022).)

24 On March 16, Governor Newsom issued Executive Order N-33-20, stating that COVID-19
25 had “rapidly spread throughout California” and directing Californians to stay home for the
26 preservation of public health and safety. (<https://www.gov.ca.gov/wp->

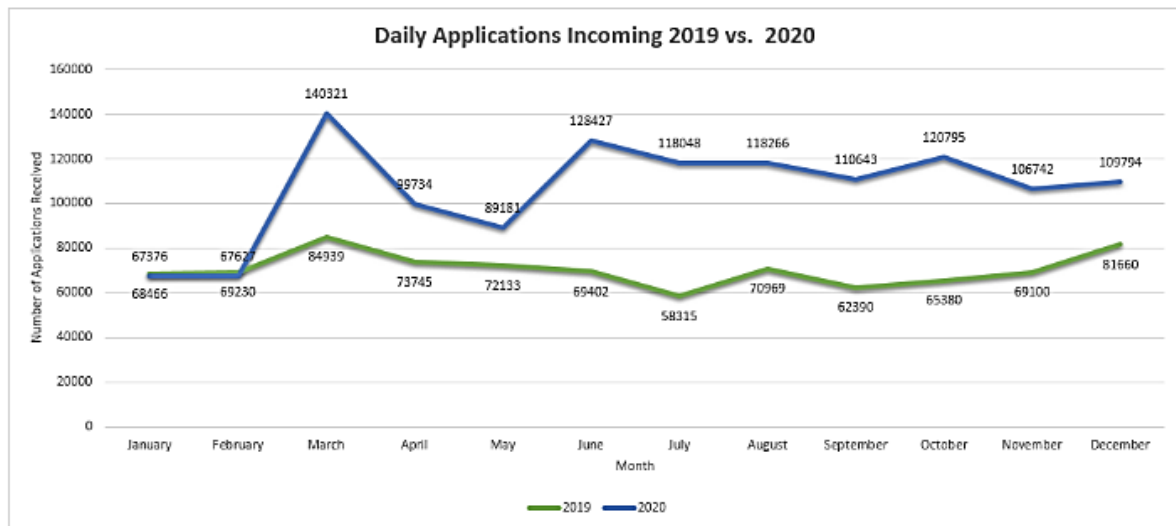
27 ³ If the approval occurs more than 10 days after the purchase, the dealer may immediately
28 release the firearm to the purchaser; i.e., the purchaser does not wait 10 days from the date of
approval, but 10 days from the date of purchase. (§ 28220, subd. (f)(3)A).)

1 content/uploads/2020/03/3.19.20-EO-N-33-20-COVID-19-HEALTH-ORDER-03.19.2020-
2 signed.pdf> (as of June 17, 2022).) The order advised Californians to shelter at home unless they
3 needed to perform authorized necessary activities and, in which case, “they should at all times
4 practice social distancing.” (*Id.*)

5 Many schools, childcare centers, government buildings, and businesses likewise reduced
6 operations or closed entirely. For example, courts throughout California temporarily reduced or
7 completely suspended operations. On March 16, 2020, the San Diego Superior Court asked that
8 summoned jurors not report to duty and suspended all non-emergency services starting March 17,
9 including: all criminal proceedings including arraignments, trials and sentencing, all civil
10 proceedings, and most family court proceedings. The court extended the emergency order several
11 times. Criminal jury trials did not resume in San Diego Superior Court until October 13, 2020.
12 Federal courts in California likewise suspended criminal jury trials beginning in March 2020.
13 (See *United States v. Olsen* (9th Cir. 2022) 21 F.4th 1036, 1041 [recounting general orders
14 suspending criminal trials in the Central District of California from March 2020 through
15 approximately May 2021].)

16 During this time, firearms sales increased dramatically to unprecedented levels. (Thompson
17 Decl. ¶ 26.) The 2020 calendar year began unremarkably in terms of firearms sales. In January
18 and February 2020, the number of applications to purchase a firearm submitted to the Bureau of
19 Firearms had closely matched (or were actually slightly less than) what the Bureau had received
20 in the first two months of 2019, approximately 2,000 applications per day on average. (Martinez
21 Decl., Ex. B, “Daily Applications Incoming 2019 vs. 2020”; Thompson Decl., ¶ 29.) But in the
22 middle of March 2020, gun sales began to surge. On March 17, 18, and 19 the Bureau received
23 over 9,000 applications each day. (Thompson Decl. ¶ 30.) And on March 20, it received over
24 7,600—a slight drop from the days prior, but still nearly three times what would have been
25 expected. (*Ibid.*) For the full month of March, the Bureau received approximately 140,000
26 applications to be processed, as compared to the 85,000 that it received in the same month the
27 year before, with much of the increase coming in in the latter half of the month. (Martinez Decl.,
28 Ex.B; see also Thompson Decl, Ex. A.) This surge continued for the rest of the 2020, with

October 2020 having nearly twice the number of applications as October 2019 and November and December also seeing steep increases as compared to the year prior. (*Ibid.*)



C. The Bureau of Firearms Responded to a Surge in Firearms Applications.

The Bureau of Firearms routinely monitors incoming applications, and processes applications within the 10-day waiting period, or where applicable, delays applications pursuant to section 28220, subdivision (f)), before expiration of the 10-day waiting period. (Thompson Decl. ¶¶ 16.) The Bureau monitors DROSs and tries to project incoming numbers in order to adjust staffing resources to meet changing demands. (Thompson Decl. ¶ 27.) For example, in the past the Bureau has anticipated and staffed for seasonal increases in firearms sales (like at Christmas) and temporary increases in DROSs due to changes in the law. (*Ibid.*) But the Bureau had no way of anticipating the surge in firearms sales that it saw beginning in March 2020. (*Ibid.*)

Bureau staff responded to the surge in applications by continuing to report to work throughout the pandemic to process applications. (Thompson Decl. ¶ 36.) Leadership at the Bureau, including supervisors in the Background Check Unit, continued to monitor the number of daily DROS applications received and processed and prioritized processing of the applications. (*Id.* at ¶ 27, Exh. A [morning emails from March 4 through August 20, 2020]⁴.) They worked

⁴ This exhibit includes morning emails from March 4 through August 20, 2020. The Department has not located emails for the following days: April 15, 16 and 28, 2020.

1 under the constraints of the pandemic, which included some analysts needing to quarantine or
2 stay home due to increased medical risk, and other staff taking leave due to the need to care for
3 sick family members or children whose schools and daycares had closed. (*Id.* at ¶¶ 32-33.)

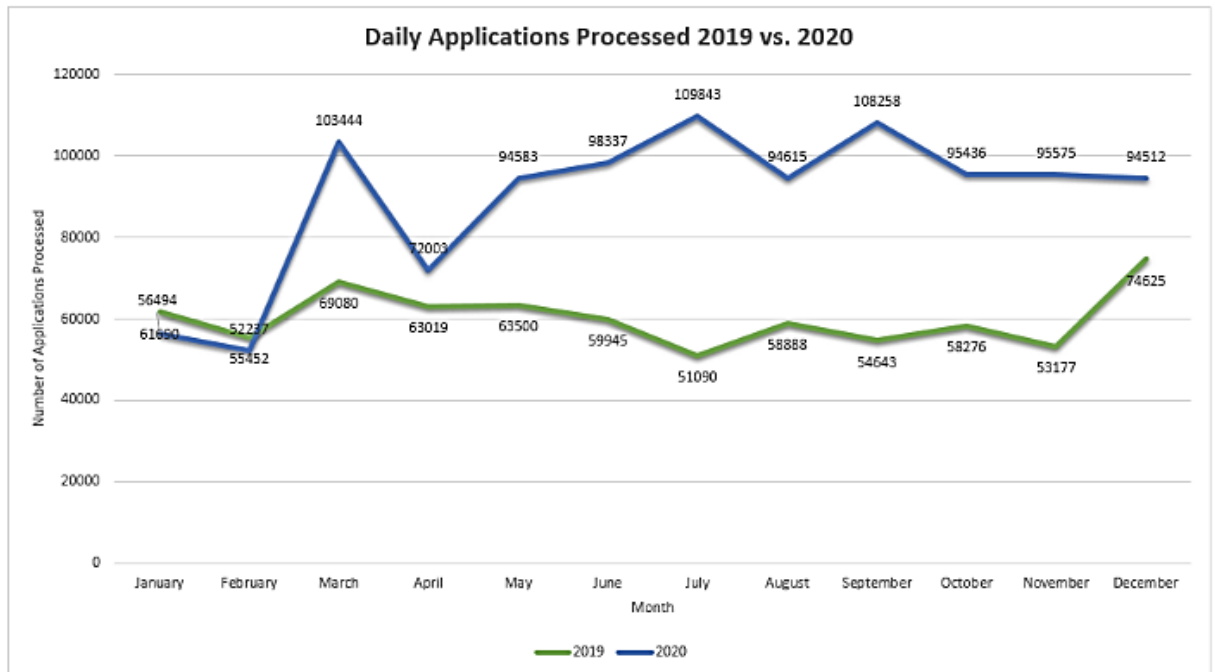
4 To conduct background checks within the 10-day waiting period, the Bureau began
5 implementing all feasible measures to counteract these operational and staffing issues.
6 (Thompson Decl. ¶ 39.) These measures included redirecting staff from other units within the
7 Bureau. (*Id.* at ¶ 40.) The Bureau treated this as an “all hands on deck” situation. (*Ibid.*) The
8 Bureau also used flexible schedules and a mix of voluntary and mandatory overtime to increase
9 processing capacity, and moved cubicles to accommodate social distancing. (*Id.* at ¶¶ 41, 43.)
10 Staff worked on weekends and early in the mornings. (*Ibid.*) The Bureau also expedited ongoing
11 hiring efforts. (*Id.* at ¶ 43.) However, hiring efforts were at best a long-term solution, as analysts
12 typically need six months of training to be able to adequately conduct background checks
13 independently. (See Tobia Decl., ¶¶ 4, 10).

14 During this time, the Bureau placed the following message on its website, notifying dealers
15 and firearms purchasers that the impact of COVID-19 could lead to background checks
16 completed after the expiration of the 10-day waiting period but that the Department would
17 continue to strive to complete checks in the shortest time possible:

18 Under Penal Code section 28220(f)(4), the Department of Justice (DOJ) has up to 30
19 days to complete background checks on firearms purchasers. . . . DOJ typically
20 completed these checks within Penal Code Section 26815(a)’s 10-day waiting period.
21 COVID-19 protective measures have impacted the ability to increase personnel
22 resources in the DROS unit to address the recent sustained increase in firearms . . . as
23 DOJ employees *continue to perform the statutorily required background checks*
24 throughout the COVID-19 pandemic, circumstances *may compel* that background
25 checks are completed after the expiration of the 10-day waiting period for firearms
26 purchases. DOJ will continue to strive to provide the best service and *complete these*
27 *checks in the shortest time possible.*

28 [italics added].

In March 2020, staff processed approximately 103,000 applications, whereas in the prior
year in March they had processed 69,000. (Martinez Decl., Ex. C.) These numbers do not include
the percentage of applications that are auto-approved. (*Ibid.*) Staff continued this trend of
processing significantly more applications, year-over-year throughout 2020. (*Ibid.*) Some months,



including July and September, staff processed double the number of applications that they had processed in 2019. (*Ibid.*)

By July 2020, the Bureau was again processing all applications within the 10-day waiting period. And although firearms sales have still not declined, BOF has continuously been able process all applications within the waiting period (as it did before COVID-19). (Thompson Decl. ¶¶ 45-46.)

II. THE PETITION FOR WRIT OF MANDATE.

On August 27, 2020, Petitioners filed a Verified Petition for Writ of Mandate under Code of Civil Procedure section 1085 and Complaint for Declaratory Relief claiming that officials at the Department had “used the DOJ’s Dealer Record of Sale (“DROS”) Entry System . . . and the COVID-19 pandemic as an opportunity to undermine and restrict citizens’ access to firearms in violation of California’s statutes and regulations governing firearms transactions.” (Pet. ¶ 1.) Petitioners allege that California’s “statutory scheme 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 for one of the three reasons given in section 28220, subdivision (f)(4). (Pet. ¶ 8.)

Petitioners seek a writ of mandate compelling the Attorney General, Director of Bureau of Firearms, and Department of Justice to take three actions. First, where an application cannot be processed within California’s 10-day waiting period and such applications are not designated as “delayed” under section 28220, subdivision (f) (used where a check has been performed and a partial record has been found that needs more research), Petitioners demand that the Department approve the applications, even if the Department has been unable to perform any background check on the applicant. (Pet. ¶ 59 & p. 20; see also Pet.’s Br. at p. 10.) Second, Petitioners seek authorization for “firearms dealers to deliver firearms to purchasers and transferees after 10 days, except where Respondents comply with the statutes to extend the 10-day waiting period under three specific and enumerated circumstances set forth in Penal Code section 28220(f)(1)(A).” (Pet. p. 20.) Third, where a transfer is delayed under subdivision (f)(3), Respondents want the Department to “immediately notify the dealer” of the reason(s) for any delay and inform the purchaser about the delay pursuant to section 28220, subdivision (f). (*Ibid.*)

Petitioners also ask for related declaratory relief under Code of Civil Procedure section 1060: (1) “That DOJ may not use the DROS Entry System to leave an individual in ‘Pending’ status after expiration of the 10-day waiting period under Penal Code section 28220 and 11 CCR section 4230,” and (2) “That DOJ may not delay firearm transfers beyond the initial 10-day waiting period except in the three specific and enumerated circumstances set forth in Penal Code section 28220(f)(1)(A).” (Pet. ¶ 63 & p. 20; see also Pet.’s Br. at p. 10.)

STANDARD OF REVIEW

“A writ of mandate may be issued by any court to an inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station . . .” (Code Civ. Proc., § 1085, subd. (a).) For a writ to issue, the Court must find a “clear, present, (and usually ministerial) duty” on the part of the respondent; and a “clear, present, and beneficial right” in the petitioner, to performance of that duty. (*Pacifica Firefighters Assoc. v. City of Pacifica* (2022) 76 Cal.App.5th 758, 765.) “As a general matter, courts ‘will be deferential to government agency interpretations of their own regulations, particularly when the interpretation involves matters within the agency's expertise and does not

1 plainly conflict with a statutory mandate. (See *Yamaha Corp. of America v. State Bd. of*
2 *Equalization* (1998) 19 Cal.4th 1, 12–13.) Courts “will not disturb the agency's determination
3 without a demonstration that it is clearly unreasonable.” (*Ibid.*)

4 **ARGUMENT**

5 **I. THE WRIT SHOULD BE DENIED BECAUSE THE MATTER IS MOOT.**

6 **A. There Is No Ongoing Delay in Processing Firearms Applications, Making** 7 **Petitioners’ Writ of Mandate Claim Moot.**

8 The Court should deny the writ because this controversy is moot. “California courts will
9 decide only justiciable controversies.” (*Wilson & Wilson v. City Council of Redwood City* (2011)
10 191 Cal.App.4th 1559, 1574 (*Wilson*), citations omitted.) “A case is moot when the decision of
11 the reviewing court ‘can have no practical impact or provide the parties effectual relief.’” (*MHC*
12 *Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 214 (*MHC*).)
13 “Stated differently, moot cases ‘are “[t]hose in which an actual controversy did exist but, by the
14 passage of time or a change in circumstances, ceased to exist.’” (*Parkford Owners for a Better*
15 *Community v. County of Placer* (2020) 54 Cal.App.5th 714, 722, quoting *Wilson*, 191
16 Cal.App.4th at 1573.) “The pivotal question in determining if a case is moot is therefore whether
17 the court can grant the plaintiff any effectual relief.” (*Wilson*, 191 Cal.App.4th at p. 1574.)

18 There is no effective relief for the court to grant through Petitioner’s request for a writ of
19 mandate. Even if the evidence showed that any violation of a mandatory duty (it does not), all of
20 the transactions mentioned in the petition have received a final decision by the Department, and
21 since July 2020, DOJ has again been able to process applications within the 10-day waiting
22 period, which has always been its goal. (Thompson Decl.¶ 45-56.) As there is no ongoing delay,
23 the mandates Petitioner seeks would have “no practical impact” and could provide the parties “no
24 effectual relief.” (*MCH*, 106 Cal.App.4th at p. 214.)

25 **B. The Discretionary Exceptions to Mootness Do Not Apply.**

26 Where a case is moot, a court may grant review if one of “three discretionary exceptions” to
27 mootness apply: “(1) when the case presents an issue of broad public interest that is likely to recur
28 [citation]; (2) when there may be a recurrence of the controversy between the parties [citation];

1 and (3) when a material question remains for the court’s determination [citation.].” (*Epstein v.*
2 *Superior Court* (2011) 193 Cal.App.4th 1405, 1411.) None of these conditions are present here.

3 As to the first exception, while this case may involve an issue of broad public interest, it
4 plainly does not involve one that is likely to recur. The Department’s policy and practice is and
5 always has been to complete firearms background checks within the 10-day waiting period, to
6 specifically delay firearms transactions under section 28220, subdivision (f), when that
7 subdivision applies, and to following each of section 28220’s requirements. (Thompson Decl.
8 ¶ 24.) Only because of a confluence of unprecedented events did the Department depart from this
9 practice for a relatively short period of time at the start of the COVID pandemic. (*Id.* ¶ 46.)
10 Petitioners offer no evidence suggesting that there is likely to be a recurrence of the issue.

11 In a recent decision concerning another challenge to California’s early response to the
12 COVID-19 crises, the Ninth Circuit, sitting en banc, held that the case was moot. (*Brach v.*
13 *Newsom* (9th Cir. June 15, 2022) ___ F.4th ___ [p. 7].) The case involved a challenge to the
14 Governor’s blueprint for reopening schools, which by the time the court was hearing the case,
15 was no longer in effect. (*Ibid.*) The court determined the controversy was moot and that the
16 plaintiff’s speculation that the controversy could recur (by the Governor again suspending in-
17 person instruction) was insufficient reason to hear the case. (*Ibid.*) The court determined: “It
18 could not be clearer that this case is moot.” (*Id.* [p. 12].)

19 Likewise, the controversy here is moot and is unlikely to recur. As the evidence shows,
20 despite the continued surges in gun sales, the Bureau has been able to actively manage its
21 workload to keep up with demand. (Martinez Decl., Ex. D; Thompson Decl. ¶¶ 40-46.) And it has
22 done this despite subsequent outbreaks. (*See Brach, supra*, ___ F.4th at ___ [p. 16-17] [discussing
23 the changed COVID landscape in California and that it was relevant that the challenged policy
24 had not been revived during latter outbreaks “while the State’s case count soared well past
25 numbers reached early in the pandemic.”].) For the same reasons, the second exception, which
26 applies if there may be a recurrence of the controversy between the parties, is likewise
27 inapplicable. As to the third exception, the same facts demonstrate that there is no material
28 question remaining for the Court’s determination. There is no basis to issue a writ of mandate to

1 correct an alleged violation that the Department long ago addressed through application of
2 increased resources. Petitioners may argue that there is a material question that remains for this
3 Court’s consideration because the Bureau continues to post the statement concerning the impact
4 of COVID-19 (quoted at p. 13, *supra*), which Petitioners believe to be an inaccurate statement of
5 the law. However, this is not sufficient reason to apply the mootness exception, because, as
6 explained in the next section, the statement accurate states applicable law and Petitioner’s
7 interpretation of the statement lacks merit. And even if it did, the statement evidences no policy
8 of unduly delaying background checks, explaining that the Department strives to complete the
9 background checks within the 10-day waiting period. The evidence in this case shows no practice
10 of the Department to delay all background checks to 30 days, the upper statutory limit for
11 conducting a check. Instead it shows a concerted, sustained effort to conduct checks during the
12 10-day waiting period. (See Thompson Decl., ¶¶ 39-46).

13 Finally, courts decline to exercise discretion over moot cases where “any resolution would
14 be unlikely to provide guidance for future . . . disputes. (*See MHC, supra*, 106 Cal.App.4th at p.
15 215 [declining to exercise discretion to resolve moot questions where “resolution would be
16 unlikely to provide guidance for future rent control disputes, because the two issues presented in
17 the City’s appeal are essentially factual in nature and therefore require resolution on a case-by-
18 case basis.”) Here, none of the three directions Petitioners ask for in a writ order would provide
19 any meaningful guidance when it comes to processing firearms applications. The Department’s
20 policy is to process applications within the 10-day period—approving, denying, or delaying for
21 further review based on “hits” in the databases. Petitioners do not suggest otherwise.

22 **C. The Court Should Also Decline to Issue Declaratory Relief on Account of**
23 **the Case’s Mootness.**

24 As with a claim for writ of mandate, a declaratory relief claim requires an actual
25 controversy. Declaratory relief is restricted to “cases of actual controversy relating to the legal
26 rights and duties of the respective parties.” (Code Civ. Proc. § 1060; *Wilson, supra*, 191
27 Cal.App.4th at p. 1582.) While the “‘actual controversy’ language encompasses a *probable* future
28 controversy relating to the legal rights and duties of the parties,” “it does not embrace

1 controversies that are ‘conjectural, anticipated to occur in the future, or an attempt to obtain an
2 advisory opinion from the court.’” (*Wilson*, at p. 1582 [citations omitted].) Declaratory relief
3 “operates prospectively, rather than merely to redress past wrongs. (5 Witkin, California
4 Procedure (6th ed. 2022) Pleading, § 846.) To determine whether a controversy is an “actual
5 controversy, courts consider the same questions it considers when determining whether a matter
6 is ripe for adjudication.” (*Ibid.*, citing *Farm Sanctuary Inc. v. Department of Food & Agriculture*
7 (1998) 159 Cal.App.4th 402, 418.) Courts assess (1) “the fitness of the issue for judicial decision
8 and (2) the hardship that may result from withholding court consideration.” (*Ibid.*; *Security*
9 *National Guaranty, Inc. v. California Coastal Com.* (2008) 159 Cal.App.4th 402, 418, fn. 5.) “A
10 difference of opinion does not give rise to a justiciable case until an actual controversy arises.”
11 (*Wilson v. Transit Authority* (1962) 199 Cal.App.2d 716, 722.) Courts “may refuse to exercise”
12 their power to grant declaratory relief “in any case where its declaration or determination is not
13 necessary or proper at the time under all the circumstances.” (Code Civ. Proc. § 1061.)

14 Here, the alleged controversy lacks fitness for judicial determination. A controversy lacks
15 fitness for judicial determination when its “posture lacks . . . urgency” and “definiteness
16 necessary to render declaratory relief appropriate.” (*BKHN, Inc. v. Dep. of Health Servs.* (1992)
17 3 Cal.App.4th 301, 309.) Here, Petitioners seek declaratory relief regarding DOJ’s use of the
18 “pending” status after expiration of the 10-day waiting period, and a statement that DOJ may not
19 delay firearm transfers beyond the initial 10-day waiting period, except as provided by
20 subdivision (f)(1)(A) of section 28220. But Petitioners have shown no policy by DOJ to do either
21 of those things in its typical administrative practice and has shown only a temporary practice
22 utilized under severe operational difficulties that are unlikely to recur. (Cf. *Californians for*
23 *Native Salmon etc. Assn. v. Department of Forestry* (1990) 221 Cal.App.3d 1419 [declaratory
24 relief claim could be maintained where petitioner alleged agency had an ongoing policy of
25 ignoring laws and regulations].) Petitioner’s declaratory relief, therefore, lacks any urgency.

26 Further, as argued explained above, this controversy also lacks definiteness. To the extent it
27 has any application at all, it would be in a different circumstance with unpredictable facts. By
28

1 avoiding ruling on this moot controversy, the Court avoids issuing a ruling that would be
2 deployed during uncertain times with unpredictable consequences.

3 And while there is risk in ruling on this indefinite and moot controversy, declining to
4 consider the issues on the merits would cause little hardship for the Petitioners. The Department
5 resolved the delays at issue in this case before this lawsuit was even filed. And even before that
6 resolution, the length of delay beyond the 10-day waiting period for most purchasers, by
7 Petitioner's count, was under 3 days (See Duvernay Decl., ¶ 6). As indicated by the Bureau's
8 daily emails, the longest delay for any purchaser was 8 days—twelve days shorter than the time
9 that section 28220, subdivision (f), affords in various circumstances. (See Thompson Decl, Ex.
10 A.) If the same scenario were to recur, which is unlikely, Plaintiff could bring a similar lawsuit
11 and seek temporary injunctive relief, and the Court could address the merits at that time with
12 knowledge of the circumstances present in whatever case has been brought.

13 Petitioners want this Court to rule that when it becomes impossible for DOJ to conduct its
14 background review of applicants within ten days—whether due to a pandemic, an Earthquake,
15 hacking, or some other unforeseeable event (or confluence of events) —that firearms dealers
16 should be able to sell firearms to people who have undergone no background check and that DOJ
17 should approve the applications. This would be an extraordinary result that would result in
18 unvetted firearms flooding into California. These firearms would continue to circulate after any
19 delay is resolved. The Court should decline to answer this question until it is faced with a
20 particular, live controversy so that the Court may undertake what could likely be an important
21 balancing of interests, including the public's interest in having background checks be performed,
22 with the benefit of concrete facts during a material controversy. Accordingly, the Court should
23 decline to issue declaratory relief.

24 **II. THE DEFENDANTS COMPLIED WITH CALIFORNIA'S STATUTORY SCHEME.**

25 If the Court does proceed to consider the merits of this case, it should determine that the
26 Petitioner has failed to show that the Respondents have violated any statutory duty and deny the
27 petitioner for writ of mandate.
28

1 **A. The Department Has No Policy of Delaying Background Checks.**

2 With no evidence to support their claims, Petitioners argue that the Department “exploited
3 the COVID-19 pandemic as an opportunity to unlawfully suspend—and thereby violate—the
4 statutes and regulations requiring DOJ to conduct background checks within the first 10 days of a
5 firearm transaction.” (See Pet.’s Br. 1.) Petitioners ignore the simultaneous challenges of the
6 COVID-19 pandemic and surge in firearms transactions needing processing, characterizing them
7 as mere “administrative challenges” or short-staffing, and conclude, again with no evidence, “[I]n
8 short, DOJ conducted background checks when it got around to it, despite what the requirements
9 of Penal Code § 28220 and 11 C.C.R. § 4230 say.” (*Id.* at 2.)

10 The evidence shows otherwise. As declarant Shanon Thompson describes, Petitioners went
11 to great lengths to process background checks during early days of the pandemic. Statistics
12 provided by the Department in discovery, which show that the Department took longer than ten
13 days to conduct background checks during the height of the pandemic, show no conspiracy or
14 policy to delay background checks. The numbers, instead, show a concerted effort to timely and
15 efficiently process firearms applications in response to a surge in applications. The Bureau’s
16 processing climbed significantly in 2020 even as the Bureau navigated severe challenges.
17 (Martinez Decl., Ex. B.) These challenges included not only the pandemic and an extraordinary
18 increase in workload, but also two days where their offices were closed due to protests (resulting
19 in an inability to process background checks) and where firearms purchases increased even
20 further. (See Thompson Decl. ¶¶31-38, Ex. A at pp. 89-95, Ex. B; Martinez Decl., Ex. C.)

21 The Petitioners misinterpret the Department’s statement on its website to invent a policy
22 that the Department does not have and a dilatory attitude towards processing firearms that has no
23 foundation in the record. Petitioners ignore the Department’s statement that it strives to complete
24 background checks in the shortest amount of time possible. Petitioners also take issue with DOJ’s
25 statement on its website that “Under Penal Code section 28220(f)(4), the Department of Justice
26 (DOJ) has up to 30 days to complete background checks on firearms purchasers.” However, this
27 is an accurate statement of the law. (See § 28220, subd. (f)(4) [providing 30 days from the
28 dealer’s original submission of purchaser information to notify dealer where Department is

1 unable to ascertain the disposition of an arrest or criminal charge, mental health outcome, or
2 eligibility to purchase a firearm].) The Department’s statement on its website also specifically
3 notifies firearms dealers and the public that “DOJ employees *continue to perform the statutorily*
4 *required background checks* throughout the COVID-19 pandemic.” This also accurately states
5 DOJ’s statutory requirement under section 28220, subdivision (a), and correctly assured that
6 processing had continued. Petitioner can point to no directive from the Legislature that a
7 background check should cease 10 days after the Department receives the application, even where
8 the Department has not been able to perform the required database checks. Far from it. As noted,
9 the Legislature gave the Department up to 30 days to complete background checks where it was
10 unable to determine eligibility in a shorter period. And here, due to a confluence of factors—
11 COVID and a surge in firearms sales among them—the Department was unable to make that
12 determination for some, but not all, purchasers during a brief period at the outset of the pandemic.

13 The statement goes on to inform dealers and purchasers about delays that it has experienced
14 due to the pandemic, saying that “circumstances *may compel*” DOJ to take longer than the 10-day
15 waiting period to perform a background check. It concludes by affirming DOJ’s commitment to
16 processing applications timely: “DOJ will continue to strive to provide the best service and
17 *complete these checks in the shortest time possible.*” (Emphasis added.) None of this
18 demonstrates a policy by DOJ to “impose delays that prevent law-abiding, responsible
19 Californians from taking possession of their firearms.” (See Pet.’s Br. at 11.) Rather, the
20 statement affirms the Department’s responsibility to check each application to purchase a firearm,
21 and its continuing efforts to do so as quickly as possible the early months of the pandemic.

22 Petitioners’ analysis of the discovery data (see Duvernay Decl., at ¶ 6; Pet.’s Br. at p. 8,
23 FN 4) likewise does not illustrate any conspiracy to delay background checks. The Department
24 does not dispute that during the time in question it reviewed records for many background checks
25 more than 10 days after it had received a DROS. But these delays do not indicate any conspiracy
26 to “impos[e] delays.” (See Pet.’s Br. at p. 11.) Even the numbers cited by Petitioners show that
27 the average time to decision was under 13 days---three days beyond the statutory background
28 check of 10-days. (See Duvernay Decl. p. 8, FN 4.) Petitioners read the Department’s statement

1 on its website as a policy to delay every transaction to 30 days, which neither the facts nor the
2 wording support. The numbers reinforce that Petitioners' reading of Department's statement is
3 inaccurate.

4 **B. DOJ Complied with its Obligations Under California Law.**

5 Petitioners' writ of mandate requires this Court to cross-reference California's firearms
6 statutes to imply a mandatory statutory deadline for the Department to conduct its initial review
7 of records during background checks, and to nullify DOJ's clear requirement to perform a
8 background check in section 28220, subdivision (a). This reading of the statutes lacks merit, and
9 for that reason, the Court should deny the writ of mandate.

10 In determining the meaning of a statute, the court's "fundamental task is 'to ascertain the
11 intent of the lawmakers so as to effectuate the purpose of the statute.'" (*Allen v. Sully Miller*
12 *Contracting Co.* (2002) 28 Cal.4th 222, 227.) The court first must examine the statutory language
13 and if possible, give the language its usual and ordinary meaning. (*Ibid.*) "If, however, the
14 statutory language is ambiguous, a court "may resort to extrinsic sources, including the ostensible
15 objects to be achieved and the legislative history." (*Ibid.*) The court ultimately should "choose the
16 construction that comports most closely with the apparent intent of the lawmakers, with a view to
17 promoting rather than defeating the general purpose of the statute." (*Ibid.*) In undertaking this
18 task, courts "do not consider the statutory language in isolation," rather they "look to the entire
19 substance of the statute. . . . in order to determine the scope and the purpose of the provision."
20 (*Flannery v. Prentice* (2001) 26 Cal.4th 572, 578, citations and internal quotations omitted.)

21 California law recognizes that "the law never requires impossibilities." Civ. Code, § 3531.
22 This interpretive maxim aids courts in effecting "just application" of the law. (*National Shooting*
23 *Sports Foundation* (2018) 5 Cal.5th 428, 433.) The application applies when strict interpretation
24 of a law would result in consequences contrary to the overriding intent of the statute. (*Ibid.*) As
25 the Court explained in *Shooting Sports*, the maxim does not invalidate a statute but rather seeks to
26 effectuate its underlying intent. (*Ibid.*) In accordance with the maxim, "the case law recognizes
27 that a statute may contain an implied exception for noncompliance based on impossibility where
28 such an exception reflects a proper understanding of the legislative intent behind the statute."(*Id.*

1 at p. 434.) Courts “avoid any construction that would produce absurd consequences.” (*Flannery*,
2 *supra*, 26 Cal.4th at p. 578.)

3 For example, courts construe the explicitly mandatory language in section 312 of the Code
4 of Civil Procedure to allow for limited, implied exceptions. The statute provides that “Civil
5 actions, *without* exception, can only be commenced within the periods described in this title, after
6 the cause of action shall have accrued, unless where, in special cases, a different limitation is
7 prescribed by statute.” (*Lewis v. Superior Court* (1985) 175 Cal.App.3d 366, 372.)

8 Notwithstanding the “*without* exception” language of the statute, in *Lewis v. Superior Court*, the
9 Court of Appeal construed the statute to allow for a late filing when the attorney for the plaintiff
10 had missed the filing due to a severe injury he incurred days before the deadline. The statutory
11 scheme set forth various exceptions, none of which applied to the specific circumstances of the
12 case. (*Ibid.*) Nevertheless, the Court held that the statute allowed for judicial construction of
13 implicit tolling exceptions: “The Legislature in 1872 formulated its exceptions by specification of
14 circumstances, rather than by direct statement of general principle. Of course it could not then
15 predict all of the circumstances that come within the purpose of the tolling scheme and implicit
16 tolling exceptions to effect the ostensible purpose.” (*Id.* at p. 372.) The Court held that “Language
17 of statutes of limitation must admit to implicit exceptions where compliance is impossible and
18 manifest injustice would otherwise result” and “the facts here presented give rise to an
19 impossibility of compliance with the statute of limitation.” (*Id.* at p. 376.)

20 And in *Sutro Heights Land Co. v. Merced Irr. Dist.* (1931) 211 Cal. 670, the Supreme Court
21 considered a public water agency’s statutory duty to solve drainage issue created by its canals and
22 found that although it had not “not succeeded in discharging this duty to its fullest extent, it had
23 done all that could reasonably be required of it with the money available for that purpose and
24 which the resources of the district permit.” (*Id.* at pp. 704-705.) The Court held that under
25 “[u]nder such a state of facts, the writ of mandate will not lie.” (*Ibid.*) In reaching this
26 determination, the Court considered the purpose of the Legislative purpose of the statute: “We do
27 not believe that, under this state of facts, it was ever intended by those responsible for the
28 enactment of the Drainage Act of 1907 that an irrigation district, situated as is the defendant in

1 this action, should be compelled to work its own destruction by undertaking to provide drainage
2 facilities for the district, the expense of which is beyond its financial ability to meet or pay for.”
3 (*Id.* at p. 703.)

4 Here, in passing Section 28220, the Legislature clearly intended that the Department
5 perform adequate background checks of firearms applicants, through a search of authorized
6 criminal, mental health, and other databases. Under section 28220, subdivision (a), the
7 Department is directed to perform these searches: “Upon submission of firearm purchaser
8 information, the Department of Justice shall examine its records . . . in order to determine if the
9 purchaser is a person . . . by state and or federal law from possessing, receiving, owning, or
10 purchasing a gun.” Courts have also held that the Department of Justice has a duty to complete its
11 background checks. (*See Braman v. State of California* (1994) 28 Cal.App.4th 344; *Gray v. State*
12 *of California* (1989) 207 Cal.App.3d 151.)

13 Section 28220 places no explicit deadline for the Department to conduct the review that it
14 describes in subdivision (a). California law provides for a mandatory 10-day waiting period in
15 section 26815, but that is a minimum waiting period, not a deadline for background checks. In
16 *Silvester v. Harris, supra*, the Ninth Circuit recognized that the purpose of this mandatory waiting
17 period is both to accommodate the length of time when a background check would normally be
18 performed and also serve as a cooling off period. (843 F.3d 816, 823.) Although the waiting
19 period provides time for the State to conduct background checks, there is no regulation, statute, or
20 case authority that states that every background check must take place within the mandatory
21 waiting period.

22 Petitioners urge the Court to find that that section 28220, subdivision (f), provides a time
23 limit on all background checks by specifying three circumstances where a background check may
24 take up to 30 days. (Pet.’s Br. at p. 11-12.) But Petitioner’s construction of the statute would lead
25 to absurd results. The Legislature added subdivision (f) to California’s background check law to
26 require the Department to delay firearms transactions up to thirty days where it comes across
27 incomplete mental health, criminal, or firearms records. (2013 Cal. Legis. Serv. Ch. 737 (A.B.
28 500).) The provision states that the “department *shall* immediately notify the dealer to delay the

1 transfer of a firearm to a purchaser if the records of the department, or the records available to the
2 department” indicate any one of three different circumstances relevant to determining eligibility.
3 (§ 28220, subd. (f)(4).) The provision describes three foreseeable and routine contexts where
4 background checks are not able to be completed in ten days and specifically authorizes DOJ to
5 extend the background check up to 30 days in those instances. (*Ibid.*) It demonstrates a legislative
6 determination that when a background check requires more than ten days to be completed, DOJ
7 should take additional time to complete the check. Petitioner’s construction of subdivision (f)(1)
8 to negate the Department’s duties to perform a background check where the Department needs
9 more than ten days to search records for reasons the Legislature could not have predicted,
10 undermines the central purpose of section 28220, which is to require the Department to perform
11 background checks and not approve sales until that can be accomplished.

12 Even if the Court agrees with Petitioner that statutory construction of California’s laws
13 implies that background checks should normally be performed in ten days, it should find an
14 implied exception for the situation that occurred in this case. Even in cases where statutes and
15 regulations impose explicit time limits on agencies, courts have deemed the “time limits to be
16 directory unless the Legislature expresses a contrary intent.” (*California Correctional Peace*
17 *Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1145.) No contrary intent appears
18 here. Furthermore, statutes should be construed to allow implied exceptions to timing where the
19 exceptions would “effect the ostensible purpose” of the statute. (See *Lewis v. Superior Court*,
20 *supra*, 175 Cal.App.3d at p. 372.)

21 The Bureau navigated the same social distancing and personnel issues in the early days of
22 the pandemic as other government and private entities, and did so while seeing its work nearly
23 double as firearms transactions surged. (Marlon Decl., Ex. B; Thompson Decl., ¶¶ 26-38.)
24 Despite this, the Bureau continued processing applications and did so efficiently. (*Ibid.*) In light
25 of these unique challenges, the Court should apply the plain language of section 28220 to effect
26 its central purposes that a background check be conducted. The alternative, which is an order that
27 would require Department to approve applications without a background check, would defeat the
28 clear purpose of section 28220.

1 The Ninth Circuit’s review of a district court’s handling of speedy trial issues during the
2 pandemic is instructive. In *United States v. Olsen* (9th Cir. 2022) 21 F.4th 1036, 1047, the court
3 held that there was no speedy trial violation where a trial had been continued while the Court had
4 closed due to the pandemic. The court held that the speedy trial act did not require that trial must
5 be *impossible*: “[S]urely a global pandemic that has claimed more than half a million lives in this
6 country, and nearly 60,000 in California alone, falls within such unique circumstances to permit a
7 court to temporarily suspend jury trials in the interest of public health.” In coming to the
8 conclusion, the Court did not invalidate or ignore the important right to a speedy and public jury
9 trial: “We are, however, mindful that the right to a speedy and public jury trial provided by the
10 Sixth Amendment is among the most important protections guaranteed by our Constitution, and it
11 is not one that may be cast aside in times of uncertainty.” (*Id.* at p. 1049.) But the Court
12 interpreted the government’s obligation to provide such a trial while considering operational
13 context: “The Central District of California did not cast aside the Sixth Amendment The
14 orders acknowledge the importance of the right to a speedy and public trial both to criminal
15 defendants and the broader public, and conclude that, considering the continued public health and
16 safety issues posed by COVID-19, proceeding with such trials would risk the health and safety of
17 those involved, including prospective jurors, defendants, attorneys, and court personnel. The
18 pandemic is an extraordinary circumstance and reasonable minds may differ in how best to
19 respond to it.” (*Id.* at p. 1049.)

20 Here, the Department complied with section 28220’s instruction that it perform background
21 checks by timely processing applications in the order they were received, as quickly as it could
22 while maintaining accuracy under the constraints of the pandemic, office closures due to
23 protesting, and an unprecedented surge in gun sales.

24 The relief Petitioners request shows the weakness of their position. Petitioners ask this
25 Court to “direct[] Respondents to approve applications after the expiration of the 10-day waiting
26 period, absent a statutory basis to deny or delay the application . . .” (Pet., at p. 20, Prayer 1.) If
27 Respondents had done just that—approved tens of thousands of firearms applications that failed
28 to auto-approve, rather than taking, on average, 3 more days to perform a background check—

1 DOJ would not have been following section 28220, subdivision (a)’s instruction that the
2 Department perform a background check. The Department had no authority to approve sales
3 without conducting a background check in this way. Certainly the Department has no duty,
4 ministerial or otherwise, to act outside its authority to conduct background checks, and this
5 cannot be the basis for this court to issue a writ under section 1085.

6 The Department’s regulations defining DES statuses do not further Petitioner’s argument.
7 Under section 4230 of the California Code of Regulations, the “approved” record status is to be
8 used “*for a Department-approved application.*” (Cal. Code Regs. tit. 11, § 4230, subd. (b)(1)(A).)
9 There is no basis to conclude that “Department-approved applications” should include
10 applications that were not properly subjected to a full background check due to an unprecedented
11 mixture of global pandemic, unrelenting gun buying surge, and office closures.

12 To the extent that Petitioners attempt to assert the Department violated its regulations by
13 keeping applications in “pending” status in DES beyond 10 days, despite the pending status being
14 defined as applicable “during the 10-day waiting period,” the dispute is de minimus and therefore
15 cannot support issuance of a writ of mandate. “A writ is not available to enforce abstract rights or
16 command futile acts with no practical benefits.” (*California High Speed Rail Auth. v. Superior*
17 *Court* (2014) 228 Cal.App.4th 676, 707, citations omitted.) Each application is placed in
18 “pending” status when it is received by the Department. (Thompson Decl. 9.) For applicants that
19 are not automatically approved during DOJ’s initial automated review of records, an analyst must
20 first review records before changing the status of the application in DES. (*Ibid.*) It would have
21 been a futile to manually change statuses at the conclusion of the 10-day wait period when
22 “pending”—notwithstanding its definition in the regulation—best represented the status of the
23 applications: their review was ongoing and the applications could not be approved. Choosing to
24 change the status from “pending” to “delayed” would have increased confusion as well, as it
25 would have resulted in communications going to purchasers that suggested a need for additional
26 records to be reviewed. (Thompson Decl. ¶ 24). As dealers are not allowed to transfer firearms in
27 pending or in delayed status, keeping applications in “pending” rather than marking them
28 “delayed” did not prejudice Petitioners or other buyers and provided dealers sufficient notice not

1 to transfer the firearm. (See § 26815 [“No firearm shall be delivered, “*or after notice by the*
2 *department pursuant to Section 28220*”].)

3 Finally, because the Department complied with its obligations under the statute, the rest of
4 Petitioner’s arguments are without merit. The ability of the Governor to suspend laws and impose
5 emergency orders under the Emergency Services Act is irrelevant here. The Department’s actions
6 did not result in any de facto suspension of the statutes. The Department complied with its
7 obligations under the statute and effectuated the intent of the Legislature that it performs a
8 background check before approving a gun sale. Likewise, the Department did not
9 “administratively rewrite” a statute or “substitute its judgment for the Legislature.” Here, the
10 Legislature has made it clear that the Department should conduct background checks and the
11 Department complied with its obligation to conduct background checks to the best of its ability,
12 as required by the section 28220.

13 CONCLUSION

14 For the above reasons, the petition for writ of mandate and request for declaratory relief
15 should be denied.

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17
18
19 Dated: June 17, 2022

Respectfully submitted,

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