

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 07/22/2022

TIME: 01:30:00 PM

DEPT: C-64

JUDICIAL OFFICER PRESIDING: John S. Meyer

CLERK: Herlinda Chavarin

REPORTER/ERM: Teri L. Smith CSR# 7949

BAILIFF/COURT ATTENDANT: T. Moore

CASE NO: **37-2020-00030178-CU-MC-CTL** CASE INIT.DATE: 08/27/2020

CASE TITLE: **CAMPOS vs BECERRA [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT TYPE: Motion Hearing (Civil)

APPEARANCES

Bradley Benbrook, counsel, present for Plaintiff(s) via remote video conference.

Megan Richards, counsel, present for Defendant, Plaintiff(s).

Steve Duvernay, counsel, present via remote video appearance for Petitioner

The Court hears oral argument and CONFIRMS the tentative ruling as follows:

The petition for writ of mandate is **GRANTED**.

Mootness

Respondents argue the petition should be denied because the case is moot. They argue the Department resolved all delays in processing background check applications back in July of 2020, which was more than two years ago.

Respondents' mootness argument is not compelling. The case on which they principally rely, *Brach v. Newsom* (9th Cir. 2022) --- F.4th ----2022 WL 2145391, is readily distinguishable. In *Brach*, the plaintiffs challenged the Governor's executive orders "to the extent they incorporated guidance on school reopening" as unconstitutional, and they sought an injunction as to the CA Department of Public Health's 2020-2021 Reopening Framework. *Id.* at 3-4. While the case was pending, the Governor rescinded the executive orders and the 2020-2021 Reopening Framework was revoked. *Id.* at 4. The Ninth Circuit thus concluded "it could not be clearer that this case is moot" because "there is no longer any state order for the court to declare unconstitutional or to enjoin." *Id.* at 4.

Here, unlike *Brach*, the record indicates respondents have not rescinded the challenged policy – i.e., the Department continues to claim that section 28220(f) provides up to 30 days to complete firearm background checks for any reason. The record indicates the challenged policy remained publicly posted as recent as May 26, 2022, and petitioners assert it continues to remain live on the website.

Merits**- 10-Day Period**

Respondents argue the Department has no explicit deadline to conduct background checks within the 10-day waiting period, such that their interpretation of an upper 30-day limit under Penal Code section 28220 is reasonable.

This argument is not persuasive. Both the statutory and regulatory scheme show the Department's background check review is based on a 10-day waiting period. Pen. Code §§ 26815(a) 27540(a) (10-day limit on delivering firearm); 28220(d)(e)&(f) (delays cross-reference the waiting period in sections 26815 and 27540); 11 CCR § 4230(b)(1)(A), 4230(b)(2)(B) (pending status in DROS turns to "delayed" when Department cannot determine eligibility during the 10-day period).

- Penal Code section 28220(f)

The crux of the parties' dispute is whether Penal Code section 28220(f) provides the Department with authority to extend the 10-day background check waiting period for up to 30 days whenever it is unable to determine eligibility in a shorter period (as respondents claim) or only for specific circumstances enumerated in the statute (as petitioners claim).

Petitioners argue that under Penal Code section 28220, the Department has authority to extend the 10-day waiting period only under three specifically enumerated circumstances: where the purchaser might be prohibited (1) based on his or her mental health record; (2) based on his or her criminal record; or (3) ineligible based on the one-handgun-every-30-days limitation. Pen. Code § 28220(f)(1)(A). Respondents argue petitioners' strict interpretation of the law is incorrect, as to adopt petitioners' reading would contradict the purpose of the statute to require the Department to perform adequate firearm background checks.

A plain reading of the statute's language shows that the Legislature added the three specific circumstances for which the Department may delay releasing firearms when background checks are not completed. 2013 Cal. Legis. Serv. Ch. 737 (A.B. 500). Thus, contrary to respondents' argument, these specified situations do not show the Legislature intended to provide the Department authority to delay release for any reason that background checks are not completed. Had the Legislature wished to create a broader allowance for a 30-day delay whenever the DOJ determined additional time is needed, it could have done so. It did not. Consequently, the Court agrees with petitioners' interpretation of the statute – i.e., that the 30-day delay applies only for the specific circumstances enumerated in the statute.

- Implied Exception

Respondents argue that even if the Court finds petitioners' statutory construction is correct, the Court should nonetheless find an "implied exception" applies for the situation that occurred in this case. They argue the once-in-a-century situation created by the Covid pandemic created the unique challenges of navigating the social distancing and personnel issues in the early pandemic, coupled with a near double increase in firearm transactions.

"[T]he case law recognizes that a statute may contain an implied exception for noncompliance based on impossibility where such an exception reflects a proper understanding of the legislative intent behind the

statute." *National Shooting Sports Foundation Inc. v. State*, supra, 5 Cal.5th at 433; see also *id.*, citing *Sutro Heights Land Co. v. Merced Irr. Dist.* (1931) 211 Cal. 670, 703 (State Supreme Court excused compliance with a state statute requiring drainage efforts that would have brought "financial ruin" and "irreparable injury" to an irrigation district and its landowners; the Court did "not believe that, under this state of facts, it was ever intended by those responsible for the enactment of the [Act] that an irrigation district ... should be compelled to work its own destruction by undertaking to provide drainage facilities for the district, the expense of which is beyond its financial ability to meet or pay for.") The exception is based on a recognition of the requirements imposed by the statute and the entity's endeavor to comply with those requirements. *National Shooting Sports*, supra, 5 Cal.5th at 433, see also *Sutro Heights Land*, supra, 211 Cal. at 704.

Here, respondents do not take the position they knew they were required to comply with the 10-day period and only delay based on the three enumerated circumstances by section 28220(f), and yet could not do so due to impossible circumstances created by the pandemic. Instead, they took the position that they have authority to wait more than 10 days to conduct the background checks whenever the Department determines more time is needed, and that they complied with the statute to the best of their ability under the circumstances. Thus, respondents have not shown the implied exception for noncompliance based on impossibility applies here.

Finally, respondents argue that under petitioners' construction of the statute, this would result in the Department approving applications without a background check. Not necessarily so. Respondents' argument does not account for the potentially available remedy of seeking an emergency order from the Governor under the Emergency Services Act, Gov. Code § 8550 *et seq.*

Conclusion

For the reasons stated, the petition for writ of mandate is **GRANTED**. Petitioners are directed to submit a proposed writ for the court's signature.

IT IS SO ORDERED:



Judge John S. Meyer