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Bureau of Firearms

10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
12 CIVIL DIVISION  
13

14  
15 **LANA RAE RENNA et al.,**

16 Plaintiffs,

17 v.

18 **ROB BONTA, in his official capacity**  
19 **as Attorney General of California;**  
20 **and BLAKE GRAHAM<sup>1</sup>, in his**  
**official capacity as Acting Director of**  
**the Department of Justice Bureau of**  
21 **Firearms,**

22 Defendants.  
23  
24  
25  
26  
27

3:20-cv-02190-DMS-DEB

**DEFENDANTS' OPPOSITION TO  
MOTION FOR TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

Date: October 7, 2022  
Time: 1:30 p.m.  
Dept: 13A  
Judge: The Honorable Dana M.  
Sabraw  
Trial Date: None set  
Action Filed: 11/10/2020

28 <sup>1</sup> Blake Graham is hereby substituted for former Bureau of Firearms Director Luis Lopez. See Fed. R. Civ. P. 25(d).

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## INTRODUCTION

Plaintiffs are not entitled to extraordinary injunctive relief barring enforcement of the attorneys’ fees shifting provision of Senate Bill (SB) 1327 or the provision of Assembly Bill (AB) 1621 prohibiting certain machinery—known as computer numerical control (CNC) milling machines—used to manufacture “ghost guns,” unserialized and untraceable firearms typically self-assembled at home.

With respect to SB 1327, the parties have conferred since Plaintiffs filed their motion. The parties have agreed to enter into a written stipulation obviating any alleged need for an injunction. Declaration of Gabrielle Boutin (Boutin Decl.) at ¶¶ 2-3. Under that stipulation, in return for Plaintiffs’ dismissal of all claims challenging the fee-shifting provision of SB 1327, Defendants will not seek attorneys’ fees or costs from Plaintiffs or their attorneys pursuant to that provision in connection with this action. Boutin Decl. at ¶¶ 2-3 and Exh. A. The parties are currently preparing the stipulation and will file it as soon as practicable and before the hearing on this motion. *Id.* at ¶ 4. As a result of the stipulation and Plaintiffs’ agreement to dismiss their SB 1327 claims, they are expected to withdraw their request for injunctive relief with respect to SB 1327.

This Court should deny Plaintiffs’ motion with respect to their Second Amendment challenge to AB 1621’s prohibition of certain CNC milling machines. The California Legislature passed AB 1621 to address a massive proliferation of ghost guns that has contributed to a surge in gun deaths, particularly among young people in vulnerable communities. A.B. 1621, § 1(a)(2)–(4).

Plaintiffs have not and cannot show that their challenge to AB 1621 is likely to succeed on the merits. In *New York State Rifle & Pistol Association, Inc. v. Bruen*, \_\_ U.S. \_\_, 142 S.Ct. 2111 (2022), the Supreme Court set forth a new analytical framework for Second Amendment claims. A court must initially assess whether the “Second Amendment’s plain text covers” the regulated conduct, 142 S. Ct. at 2126—in other words, whether the regulation at issue prevents any “People”

1 from “keep[ing]” or “bear[ing]” “Arms.” Only if the Second Amendment’s plain  
 2 text applies must a court then determine whether the law is nevertheless “consistent  
 3 with the Nation’s historical tradition of firearm regulation.” *Id.* at 2133.

4 Here, the *Bruen* analysis ends at the initial textual examination because the  
 5 Second Amendment’s plain text does not cover AB 1621’s prohibition of CNC  
 6 milling machines. Such devices are not “bear[able]” and are not “Arms”—they are  
 7 42-pound mechanical boxes that connect to laptop computers and operate to turn  
 8 gun parts into operable firearms. Nor does AB 1621’s prohibition of CNC milling  
 9 machines impede Plaintiffs’ ability to “keep” or “bear” any lawful arms. AB 1621  
 10 therefore does not implicate Plaintiffs’ Second Amendment rights under *Bruen*.  
 11 And if the Court were to determine that AB 1621 does implicate the text of the  
 12 Second Amendment, the historical analysis that *Bruen* contemplates would require  
 13 time for Defendants to develop the record to establish that AB 1621 is “consistent  
 14 with the Nation’s historical tradition of firearm regulation.” *Bruen*, 142 S. Ct. at  
 15 2133.

16 Regardless, relief is not warranted because Plaintiffs have failed to establish  
 17 the remaining requirements of injunctive relief; they cannot show irreparable harm  
 18 absent an injunction or that the balance of equities and public interest weigh in their  
 19 favor.

20 For these reasons, explained further below, the Court should deny Plaintiff’s  
 21 Motion for Temporary Restraining Order and Preliminary Injunction.

## 22 **BACKGROUND**

### 23 **I. ASSEMBLY BILL 1621**

24 On June 30, 2022, the Governor signed Assembly Bill 1621, amending several  
 25 sections of the California Penal Code concerning the manufacture, sale, and  
 26 possession of precursor gun parts known as ghost guns. A.B. 1621 at § 1, 2021-  
 27 2022 Reg. Sess. (Cal. 2022). Among other things, AB 1621 prohibits any persons  
 28 in the State of California, other than federally-licensed firearms manufacturers or

1 importers, from using, possessing, selling, or transferring a CNC milling machine  
2 that has a sole or primary purpose of manufacturing firearms. *Id.* at § 25; Cal. Pen.  
3 Code § 29185. CNC milling machines can be used in a variety of contexts and are  
4 complex machines which employ computerized controls to rotate cutting and  
5 milling tools to progressively remove material from unfinished wood, metal, glass,  
6 or plastic to produce a customizable product.<sup>2</sup> However, when sold in conjunction  
7 with precursor gun parts or for the primary purpose of manufacturing firearms,  
8 CNC milling machines sold by gun manufacturers allow individuals with “[n]o  
9 prior skill...” to “finish[] unserialized rifles and pistols in the comfort and privacy  
10 of home.”<sup>3</sup>

11 In passing AB 1621, the Legislature recognized that the massive proliferation  
12 of unserialized firearms known as “ghost guns” and materials to complete them  
13 have led to an increase in gun deaths in California, particularly among young  
14 people in vulnerable communities. *Id.* at § 1(a)(2)-(4). Ghost guns have become “a  
15 leading source of crime guns, including firearms built by people such as minors  
16 who cannot legally possess or acquire firearms in our state, as well as individuals  
17 seeking to conceal their involvement in firearm trafficking and other crimes.” *Id.* at  
18 § 1(a)(5). The manufacture and sale of unregulated and unserialized firearms has  
19 furthermore “caused enormous harm and suffering, hampered the ability of law  
20 enforcement to trace crime guns and investigate firearm trafficking and other  
21 crimes, and dangerously undermined the effectiveness of laws and protections  
22 critical to the health, safety, and well-being of Californians.” *Id.* at § 1(a). AB  
23 1621, including the CNC milling machine prohibition, was therefore enacted to  
24 ensure that “firearm precursor parts may only be sold if they are regulated under  
25

26  
27 <sup>2</sup> See, e.g., <https://www.thomasnet.com/articles/custom-manufacturing-fabricating/understanding-cnc-milling/> (last viewed September 23, 2022).

28 <sup>3</sup> <https://ghostgunner.net/> (last viewed September 23, 2022).

1 federal law to the same extent as completed frames and receivers . . . .” *Id.* at  
 2 § 1(a)(9).

3 AB 1621 contains an urgency clause stating that it “shall go into immediate  
 4 effect.” *Id.* at § 41. Other than federally-licensed firearm manufacturers or  
 5 importers, individuals who owned or possessed CNC milling machines with the  
 6 sole or primary purpose of manufacturing firearms were given 90 days from the  
 7 enactment of AB 1621 to legally sell, remove, transfer, or surrender their machines.  
 8 Cal. Pen. Code § 29185(d)(3).

## 9 **II. PROCEDURAL BACKGROUND**

10 Plaintiffs filed this action in late 2020. ECF No. 1 (Complaint). The initial  
 11 complaint challenged only California’s Unsafe Handgun Act (UHA) and then,  
 12 following the court’s order on Defendants’ motion to dismiss, only the UHA’s  
 13 provision requiring the California Department of Justice to remove three handgun  
 14 models from its roster of handguns certified for sale whenever a new model is  
 15 added. *Id.*; ECF No. 17 (Order Granting in Part and Denying in Part Defendants’  
 16 Motion to Dismiss).

17 On June 23, 2022, the Supreme Court issued its opinion in *New York State*  
 18 *Rifle & Pistol Association, Inc. v. Bruen*, \_\_ U.S. \_\_, 142 S.Ct. 2111 (2022),  
 19 altering the legal landscape by establishing a new framework for analyzing Second  
 20 Amendment claims. On July 19, 2022, the parties entered a stipulation, which the  
 21 court adopted, to vacate the scheduling order and provide Plaintiffs until August 22  
 22 to file an amended complaint. ECF Nos. 45 (Joint Motion), 46 (Order). Plaintiffs  
 23 filed their Second Amended Complaint (SAC) on August 22, 2022. ECF No. 49.  
 24 The SAC substantially expanded the scope of this action by adding numerous  
 25 claims, including ones challenging SB 1327 and AB 1621. *See id.*

26 On September 8, 2022, Plaintiffs filed their Motion for Temporary  
 27 Restraining Order and Preliminary Injunction, noticing the motion for hearing on  
 28 October 7, 2022. ECF No. 53, 53-1. Plaintiffs provided no advance notice to



Defendants that they would be filing the motion. The motion is not accompanied by any declarations or any other type of admissible evidence. *See* ECF No. 53, 53-1.

## LEGAL STANDARDS

Injunctive relief is an “extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Alvarez v. Larose*, 445 F. Supp. 3d 861, 865 (S.D. Cal. 2020) (quoting *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter*, 555 U.S. at 20. “When the government is a party, these last two factors,” balance of the equities and public interest, “merge.” *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). Analysis of the first factor (i.e., likelihood of success on the merits) is a “threshold inquiry,” and thus if a movant fails to establish that factor, the court “need not consider the other factors.” *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018).

## ARGUMENT

### **I. BY STIPULATION, PLAINTIFFS WILL SHORTLY DISMISS THEIR SENATE BILL 1327 CLAIMS**

Plaintiffs are expected to dismiss their claims related to SB 1327’s fee-shifting provision and withdraw their related request for injunctive relief. Since Plaintiffs filed their motion, the parties have conferred. Boutin Decl. at ¶¶ 2-3 and Exh. A. They have agreed to enter into a written stipulation providing that, in return for Plaintiffs’ dismissal of all claims challenging SB 1327, Defendants agree to not seek attorneys’ fees or costs from Plaintiffs or their attorneys pursuant to SB 1327’s fee-shifting provision in connection with this action. *Id.* at ¶¶ 2-3 and Exh. A. The parties are currently preparing a written stipulation to finalize the details of this

1 agreement and will file it as soon as practicable and before the hearing on the  
2 instant motion. *Id.* at ¶ 4.

3 As a result, Plaintiffs may pursue this action without risk of attorneys’ fees  
4 liability under SB 1327.

5 **II. PLAINTIFFS ARE NOT ENTITLED TO INJUNCTIVE RELIEF RELATED TO**  
6 **ASSEMBLY BILL 1621’S PROHIBITION OF CNC MILLING MACHINES**

7 **A. Plaintiffs Have Failed to Show They Are Likely to Succeed on**  
8 **the Merits of Their Second Amendment Challenge**

9 Plaintiffs are not likely to prevail on the merits because no Second  
10 Amendment rights are implicated by AB 1621’s regulation of CNC milling  
11 machines.

12 **1. The Supreme Court’s Decision in *Bruen***

13 In *Bruen*, as explained above, the Supreme Court announced a new framework  
14 for analyzing Second Amendment claims. In lieu of the “two-step test” that this  
15 Court and most other federal courts of appeals had adopted for resolving those  
16 claims, *Bruen* held that courts must apply a standard “rooted in the Second  
17 Amendment’s text, as informed by history.” *Bruen*, 142 S. Ct. at 2127. The Court  
18 also provided important guidance about how that test should be applied. *See id.* at  
19 2131-34. In rejecting the two-step framework, the Supreme Court directed courts  
20 to scrutinize Second Amendment claims by applying a “methodology centered on  
21 constitutional text and history.” *Id.* at 2128-29. Under the new approach, courts  
22 must initially assess whether the “Second Amendment’s plain text covers” the  
23 regulated conduct. *Id.* at 2129. If the answer is no, there is no violation of the  
24 Second Amendment. If the answer is yes, the government can still justify its  
25 regulation—and overcome a constitutional challenge—by showing that the  
26 challenged law is “consistent with the Nation’s historical tradition of firearm  
27 regulation.” *Id.* at 2130.

28 In some cases, *Bruen* provides that this historical inquiry will be “fairly  
straightforward,” such as when a challenged law addresses a “general societal

1 problem that has persisted since the 18th century.” *Bruen*, 142 S. Ct. at 2131. But  
2 in others—particularly those where the challenged laws address “unprecedented  
3 societal concerns or dramatic technological changes”—this historical analysis  
4 requires a “more nuanced approach.” *Id.* at 2132. Governments can justify  
5 regulations of that sort by “reasoning by analogy,” a process that requires the  
6 government to show that its regulation is “‘relevantly similar’” to a “well-  
7 established and representative historical analogue.” *Id.* at 2333 (citation and  
8 emphasis omitted). And while the Court did not “provide an exhaustive survey of  
9 the features that render regulations relevantly similar under the Second  
10 Amendment,” it did identify “two metrics: how and why the regulations burden a  
11 law-abiding citizen’s right to armed self-defense.” *Id.*

12 While *Bruen* announced a new rubric for analyzing Second Amendment  
13 claims, it also made clear that governments may continue to adopt reasonable gun  
14 safety regulations. The Court recognized that the Second Amendment is not a  
15 “regulatory straightjacket.” *Id.* at 2133. Nor is it a right to “keep and carry any  
16 weapon whatsoever in any manner whatsoever and for whatever purposes.” *Id.* at  
17 2128 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008)). And  
18 Justice Kavanaugh—joined by Chief Justice Roberts—wrote separately to  
19 underscore the “limits of the Court’s decision.” *Id.* at 2161 (Kavanaugh, J.,  
20 concurring). Justice Kavanaugh reiterated *Heller*’s observation that “the Second  
21 Amendment allows a ‘variety’ of gun regulations.” *Id.* at 2162 (quoting *Heller*, 554  
22 U.S. at 636). And he emphasized that that the “presumptively lawful measures”  
23 that *Heller* identified—including “longstanding prohibitions on the possession of  
24 firearms by felons and the mentally ill,” laws “forbidding the carrying of firearms  
25 in sensitive places,” laws “imposing conditions and qualifications on the  
26 commercial sale of arms,” and laws prohibiting the keeping and carrying of  
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28

1 “dangerous and unusual weapons”—remained constitutional, and that this was not  
 2 an “exhaustive” list. *Id.* at 2162 (quoting *Heller*, 554 U.S. at 626-627, 627 n.26).<sup>4</sup>

## 3 **2. The CNC Milling Machine Prohibition Does Not Regulate** 4 **Conduct Protected by the Plain Text of the Second** **Amendment**

5 Under the new approach laid out in *Bruen*, courts must first assess whether the  
 6 “Second Amendment’s plain text covers” the regulated conduct, 142 S. Ct.  
 7 at 2126—in other words, whether the regulation at issue prevents any “People”  
 8 from “keep[ing]” or “bear[ing]” “Arms.” The “People” who have the right to keep  
 9 and bear arms are “law-abiding, adult citizens.” *See Bruen*, 142 S. Ct. at 2134.  
 10 Defendants have no reason to dispute that an individual who seeks to own a CNC  
 11 milling machine with the sole or primary purpose of manufacturing firearms would  
 12 be part of “the People.” But Plaintiffs have not and cannot satisfy their burden of  
 13 showing that AB 1621 prevents anyone from keeping or bearing arms of any sort.

14 Indeed, AB 1621’s CNC milling machine prohibition imposes *no* burden on  
 15 the right to keep and bear arms because the plain text of the Second Amendment  
 16 does not address the ownership of CNC milling machines at all. Stated differently,  
 17 the Second Amendment’s plain text does not “cover[]” the possession, sale, or  
 18 manufacture of machines that are neither “bearable,” nor “arms” within the  
 19 meaning of the Second Amendment. *See Bruen*, 142 S. Ct. at 2126; *see also id.* at  
 20 2132 (“...the Second Amendment extends, prima facie, to all bearable arms...”).  
 21 Plaintiffs have not presented any evidence that suggests that a CNC machine is  
 22 bearable or is an arm. On the contrary, it cannot reasonably be disputed that the  
 23 product Plaintiffs do not want to relinquish is a 42-pound mechanical box that

24 <sup>4</sup> *See also Bruen*, 142 S. Ct. at 2157 (Alito, J., concurring) (“Our holding  
 25 decides nothing about who may lawfully possess a firearm or the requirements that  
 26 must be met to buy a gun. Nor does it decide anything about the kinds of weapons  
 27 that people may possess. Nor have we disturbed anything that we said in *Heller* or  
 28 *McDonald* . . . about restrictions that may be imposed on the possession or carrying  
 of guns.”); *accord McDonald*, 561 U.S. at 785 (the Second Amendment “by no  
 means eliminates” state and local governments’ “ability to devise solutions to social  
 problems that suit local needs and values”).

1 connects to a laptop computer and operates by cutting and shaping gun parts so that  
 2 they can be assembled into operable firearms.<sup>5</sup> It is plainly not intended to be  
 3 bearable, nor could someone “wear, bear, or carry [the CNC milling machine] . . .  
 4 upon the person or in the clothing or in a pocket, for the purpose . . . of being armed  
 5 and ready for offensive or defensive action in a case of conflict with another  
 6 person.” *Bruen*, 142. S. Ct. at 2134 (citing *Heller*, 554 U.S. at 584). Similarly, the  
 7 CNC milling machine is not an “Arm” within the meaning of the Second  
 8 Amendment, because the machine itself is not designed be used in an offensive or  
 9 defensive action in case of conflict with another person. *Id.* Nor does the  
 10 prohibition on possessing the “make it impossible to use firearms for their core  
 11 purpose.” *Jackson v. City & Cnty. of San Francisco*, 746 F.3d 953, 967 (9th Cir.  
 12 2014) (challenge to city’s ban on sales of certain ammunition); *cf. Ezell v. City of*  
 13 *Chicago*, 651 F.3d 684 (7th Cir. 2011) (challenge to city ordinance mandating  
 14 firing range training for gun ownership while prohibiting firing ranges within the  
 15 city).

16 Plaintiffs nevertheless argue that the CNC milling machine prohibition  
 17 implicates the right of people to manufacture their own arms. Mot. at 21-22. But  
 18 Plaintiffs produce no authority that the right to manufacture one’s own arms is  
 19 encompassed by the plain text of the Second Amendment, which says nothing  
 20 about “self-manufacture or assembly” of one’s own firearms. *Id.*; *see also* U.S.  
 21 Const. amend. II. There is simply no textual support or authority for Plaintiffs’  
 22 position that the plain meaning of the right to “keep and bear arms” under the  
 23 Second Amendment also includes the right to own any machine or machine part  
 24 that could conceivably be used to manufacture a firearm. Even if there were such a  
 25 constitutionally protected right—and there is not—AB 1621 does not prohibit the

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 28 <sup>5</sup> <https://ghostgunner.net/product/ghost-gunner-3-deposit/> (last viewed  
 September 23, 2022.)

1 self-assembly of firearms. Individuals may still lawfully purchase and assemble  
2 *serialized* gun parts. *See, e.g.*, Cal. Pen. Code § 29180.

3 The conclusion that Plaintiffs’ challenge fails as a textual matter is consistent  
4 with both the Court’s Second Amendment precedents and the way the Court  
5 analyzes other constitutional rights. *Heller* and *McDonald* invalidated unusually  
6 “severe” restrictions that “totally ban[ned] handgun possession in the home.”  
7 *Heller*, 554 U.S. at 628-629; *see also McDonald v. City of Chicago*, 561 U.S. 742,  
8 750-751 (2010). Those laws “amount[ed] to a destruction of the Second  
9 Amendment right” to “keep” firearms for “the core lawful purpose of self-defense”  
10 by “law-abiding, responsible citizens.” *Jackson*, 746 F.3d at 961 (quoting *Heller*,  
11 554 U.S. at 629, 635). Similarly, the “proper cause” requirement challenged in  
12 *Bruen* made it “virtually impossible for most New Yorkers” “to carry a gun outside  
13 the home for self-defense,” 142 S. Ct. at 2156 (Alito, J., concurring), and therefore  
14 effectively “nullif[ied] half of the Second Amendment’s operative protections”—  
15 *i.e.*, the right to “bear” arms, *id.* at 2135. Unlike the law challenged in *Bruen*,  
16 which effectively operated as a prior restraint on the ability of most law-abiding  
17 citizens to “bear” “arms” outside the home, AB 1621 does nothing of the sort.  
18 Rather, the challenged law concerns only the possession or sale of machines that  
19 can be used to self-manufacture certain unserialized arms. And like other  
20 regulations which have been upheld, AB 1621 does not prevent someone from  
21 owning, bearing, or even purchasing serialized precursor gun parts for home  
22 manufacture. *See Bauer v. Becerra*, 858 F.3d 1216, 1222 (9th Cir. 2017) (a \$19 fee  
23 on firearms transfers does not “ha[ve] any impact on the plaintiffs’ actual ability to  
24 obtain and possess a firearm”); *see also Jones v. Bonta*, 34 F.4th 704, 724 (9th Cir.  
25 2022), *vacated and remanded*, 2022 WL 4090407 (9th Cir. Sept. 7, 2022)  
26 (requiring that young adults ages 18-20 secure a hunting license before they can  
27 acquire some firearms from dealers “does not impose a significant burden on the  
28 Second Amendment right to keep and bear arms”).



1 AB 1621 does not prevent law-abiding citizens from keeping or bearing arms  
 2 of any sort. Accordingly, under *Bruen*, the burden does not shift to the government  
 3 to support the regulations with a historical analysis and Plaintiffs’ Second  
 4 Amendment challenge fails at the threshold stage of the inquiry.

### 5 6 **3. Plaintiffs Have Not Demonstrated that AB 1621 Is Not Consistent with Historical Tradition**

7 Even if the Court were to conclude that the text of the Second Amendment  
 8 applies to the ownership of CNC milling machines with the sole or primary purpose  
 9 of manufacturing firearms, Defendants can still defend AB 1621 by showing that it  
 10 is “consistent with the Nation’s historical tradition of firearm regulation”—  
 11 specifically that the law imposes a “comparable burden on the right of armed self-  
 12 defense” to the relevant historical analogues and is “comparably justified.” *Bruen*,  
 13 142 S. Ct. at 2133. But as *Bruen* itself acknowledged, that historical inquiry can be  
 14 complex and difficult. *Id.* at 2134. If this Court determines that historical tradition  
 15 is relevant in this case, Defendants should be given the opportunity to compile  
 16 historical evidence in a way that is consistent with the Supreme Court’s guidance in  
 17 *Bruen*. For their part, Plaintiffs’ have presented no admissible evidence on the  
 18 historical question.

19 If the Court were inclined to address the historical issue, it should not do so  
 20 based on a Plaintiffs’ very limited submission prepared in the context of expedited  
 21 briefing. For example, on the historical question Defendants would need to show  
 22 that AB 1621 is “relevantly similar” to the pertinent historical analogue by  
 23 demonstrating that it imposes a “comparable burden on the right of armed self-  
 24 defense” to that historical predecessor and is “comparably justified.” *Bruen*, 142 S.  
 25 Ct. at 2133. That analysis requires the “more nuanced approach” required for laws  
 26 targeting “unprecedented societal concerns or dramatic technological changes.” *Id.*  
 27 at 2132. Indeed, as *Bruen* recognizes, “‘applying constitutional principles to novel  
 28 modern conditions can be difficult and leave close questions at the margins.’” *Id.* at

1 2134 (quoting *Heller v. District of Columbia*, 670 F.3d 1244, 1275 (D.C. Cir. 2011)  
2 (Kavanaugh, J., dissenting)). In addition, *Bruen* left open other questions,  
3 including “whether courts should primarily rely on the prevailing understanding of  
4 an individual right when the Fourteenth Amendment was ratified in 1868 when  
5 defining its scope” or look to the “public understanding of the right to keep and  
6 bear arms” when the Second Amendment was ratified in 1791. *Id.* at 2138; *see also*  
7 *id.* at 2162-2163 (Barrett, J., concurring) (highlighting “two methodological points  
8 that the Court does not resolve,” including the “manner and circumstances in which  
9 post-ratification practice may bear on the original meaning of the Constitution”).

10 Compiling such a historical record is no easy task. It must be undertaken by  
11 trained historians through painstaking efforts just to identify the sources available  
12 to them in order to answer a particular historical inquiry. *See* Declaration of  
13 Zachary Schrag, *Miller v. Becerra*, No. 3:19-cv-1537-BEN-JLB (S.D. Cal. Aug. 29,  
14 2022), ECF No. 129-1 at 2-5. Even identifying which sources are available does  
15 not necessarily mean that those sources are available to be accessed, read, and  
16 analyzed. *Id.* at 5-10. Once those sources are accessed, the process of putting  
17 together findings is also incredibly time consuming, comprising potentially  
18 hundreds or even thousands of hours depending on the inquiry. *Id.* at 10-12.

19 Defendants have had two weeks to prepare this opposition brief. Requiring  
20 Defendants to provide the kind of historical record expected under *Bruen* in the  
21 context of expedited briefing is an unreasonable burden. Accordingly, if the Court  
22 were to conclude that Plaintiffs’ claims implicate the text of the Second  
23 Amendment (or defer ruling on that question)—and conclude that Plaintiffs have  
24 satisfied the other *Winter* factors—the Court should provide the parties with  
25 additional time to conduct the research and briefing necessary to perform the  
26 historical analysis called for by *Bruen*, before the Court then issues its decision on  
27 this motion.  
28



1           **B. Plaintiffs Have Not Established They Would Be Irreparably**  
 2           **Harmed Absent Injunctive Relief**

3           Plaintiffs have also failed to meet their burden to show that they are likely to  
 4           suffer irreparable harm absent an injunction. *See Winter*, 555 U.S. at 22. Plaintiffs  
 5           assert that, absent an injunction, AB 1621’s prohibition on CNC milling machines  
 6           will irreparably harm Plaintiffs by violating their Second Amendment rights. *See*  
 7           *Mot.* at 23. However, as explained above, AB 1621 does not violate Plaintiffs’  
 8           Second Amendment rights, so no such harm will occur.

9           Nor have Plaintiffs identified any harm independent of the alleged  
 10          constitutional violation. And, the harm from having to relinquish a CNC milling  
 11          machine is not irreparable, because it is possible to obtain a replacement machine if  
 12          the prohibition is ultimately deemed unconstitutional.

13          Underscoring Plaintiffs’ failure to establish any actual harm is the lack of any  
 14          declaration—from an attorney, plaintiff, or fact or expert witness—in support of the  
 15          instant motion.<sup>6</sup> This failure is not justified by urgency. AB 1621 was enacted and  
 16          took effect on June 30, 2022, nearly three months ago. Plaintiffs therefore had  
 17          more than enough time to marshal declarations. They could have, at minimum,  
 18          submitted their own declarations testifying to how they would be harmed by the  
 19          challenged laws.

20          Plaintiffs therefore have failed to show they are likely to suffer any  
 21          irreparable harm.

22           **C. The Balance of the Equities and Public Interest Weigh Strongly**  
 23           **Against Injunctive Relief**

24          Courts “pay particular regard for the public consequences in employing the  
 25          extraordinary remedy of injunction.” *Winter*, 555 U.S. at 24. The balance of

26          <sup>6</sup> Plaintiff’s brief does cite a handful of articles that were not provided to the  
 27          Court or Defendants and most of which are not readily accessible. *See Mot.* at 21,  
 28          22. Not only are these articles hearsay, but Plaintiffs have provided no evidence,  
 such as expert testimony, to assist the court’s determination of how much weight  
 they should be given.

1 hardships and the public interest factors merge when the government is a party. *See*  
2 *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, those factors weigh strongly  
3 against injunctive relief.

4 As explained above, Plaintiffs will not be harmed by the Court's denial of  
5 injunctive relief because AB 1621 does not violate their Second Amendment rights.  
6 Moreover, the practical burden of the challenged provision on Plaintiffs' ability to  
7 keep, obtain and use firearms for self-defense is small. AB 1621 does not prevent  
8 anyone from purchasing serialized gun parts and assembling those parts at home.  
9 The law also does not prevent anyone from purchasing a gun rather than assembling  
10 one. In other words, Plaintiffs will still have plenty of avenues, other than CNC  
11 milling machines, to obtain firearms for self-defense while this litigation proceeds.

12 On the other hand, any injunction against the State's enforcement of AB 1621  
13 would gravely contravene the public interest. AB 1621's prohibition on CNC  
14 milling machines is a key tool for addressing the recent "massive increase[] in the  
15 number of unserialized self-assembled ghost guns" in California that has  
16 contributed to "a surge in gun deaths." A.B. 1621 § 1(a)(2), (4). Unserialized  
17 ghost guns have "hampered the ability of law enforcement to trace crime guns and  
18 investigate firearm trafficking and other crimes." *Id.* § 1(a). An injunction  
19 preventing California from restricting the ownership, sale, and possession of CNC  
20 milling machines would undermine the State's vital public safety effort to crack  
21 down on the proliferation of unserialized ghost guns. Indeed, "[a]ny time a State is  
22 enjoined by a court from effectuating statutes enacted by representatives of its  
23 people, it suffers a form of irreparable injury." *Maryland v. King*, 133 S. Ct. 1, 3  
24 (2012) (Roberts, C.J., in chambers) (quotation and citation omitted). In short, the  
25 equities and public interest strongly disfavor an injunction.

## 26 CONCLUSION

27 For the reasons above, Defendants respectfully ask the Court to deny  
28 Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction.

1 Dated: September 23, 2022

Respectfully submitted,

2  
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5  
6  
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