

1 BENBROOK LAW GROUP, PC
2 BRADLEY A. BENBROOK (SBN 177786)
3 STEPHEN M. DUVERNAY (SBN 250957)
4 701 University Avenue, Suite 106
5 Sacramento, CA 95825
6 Telephone: (916) 447-4900
7 Facsimile: (916) 447-4904
8 brad@benbrooklawgroup.com
9 steve@benbrooklawgroup.com

10 Attorneys for Plaintiffs

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
03/03/2022 at 12:54:00 PM
Clerk of the Superior Court
By Maria Acevedo, Deputy Clerk

11
12
13
14 **SUPERIOR COURT OF CALIFORNIA**

15 **COUNTY OF SAN DIEGO**

16
17 DOE BRANDEIS; FIREARMS POLICY
18 COALITION, INC.; SECOND AMENDMENT
19 FOUNDATION; CALIFORNIA GUN RIGHTS
20 FOUNDATION; SAN DIEGO COUNTY GUN
21 OWNERS PAC; ORANGE COUNTY GUN
22 OWNERS PAC; and INLAND EMPIRE GUN
23 OWNERS PAC,

24 Plaintiffs,

25 v.

26 ROB BONTA, in his official capacity as
27 Attorney General of California,

28 Defendant.

Case No.: 37-2022-00003676-CU-CR-CTL

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

Hearing Date: August 12, 2022
Hearing Time: 1:30 p.m.
Judge: Hon. Katherine A. Bacal
Department: C-69

Hearing reservation 2491558

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	BACKGROUND.....	3
A.	California Law Requires Purchasers Of Firearms And Ammunition To Disclose Extensive Personal Information To DOJ, Which, Until AB 173, Was Required To Maintain The Confidentiality Of This Data And Use It Strictly For Law Enforcement Purposes	3
B.	AB 173 Upended This Regime By Now Requiring DOJ To Disclose Detailed Personal Information Of Millions Of California Gun Owners To Non-Law-Enforcement “Researchers” Without Their Knowledge Or Consent	5
C.	Plaintiffs File Suit Challenging The Constitutionality Of AB 173	8
III.	ARGUMENT	9
A.	Legal Standard Governing Preliminary Injunctions.....	9
B.	Plaintiffs Are Likely To Prevail On Their Constitutional Privacy Claim	10
1.	Disclosure Of Personal Identifying Information Collected In AFS And The Ammunition Purchase Records File Violates Plaintiffs’ Right To Privacy Under The California Constitution.....	11
2.	The California Supreme Court’s Treatment Of Less-Sensitive Personal Contact Information In Discovery Cases Confirms That AB 173’s Information-Sharing Regime Is Unconstitutional	17
C.	Plaintiffs Are Entitled To An Injunction To Preserve Their Constitutional Rights	19
IV.	CONCLUSION	20

TABLE OF AUTHORITIES

Cases

<i>Airbnb, Inc. v. City of New York</i> , 373 F.Supp.3d 467 (S.D.N.Y. 2019).....	19
<i>Ams. for Prosperity Found. v. Bonta</i> , 141 S.Ct. 2373 (2021)	19, 20
<i>Brock v. Super. Ct.</i> , 12 Cal.2d 605 (1939).....	10
<i>Common Cause v. Bd. of Supervisors</i> , 49 Cal.3d 432 (1989).....	19
<i>Cty. of Los Angeles v. Los Angeles Cty. Emp. Relations Comm’n</i> , 56 Cal. 4th 905 (2013).....	12, 13, 14, 17
<i>Doe v. Super. Ct.</i> , 3 Cal.App.5th 915 (2016).....	9
<i>Gospel Army v. City of Los Angeles</i> , 27 Cal. 2d 232 (1945).....	10
<i>Hill v. Nat’l Collegiate Athletic Ass’n</i> , 7 Cal.4th 1 (1994).....	2, 11, 16, 17
<i>King v. Meese</i> , 43 Cal.3d 1217 (1987).....	9
<i>Lewis v. Super. Ct.</i> , 3 Cal.5th 561 (2017).....	10, 12, 15, 16
<i>Mathews v. Becerra</i> , 8 Cal.5th 756 (2019).....	10, 19
<i>Maxcrest Ltd. v. United States</i> , 2016 WL 6599463 (N.D. Cal. Nov. 7, 2016).....	19
<i>Monterey Mech. Co. v. Wilson</i> , 125 F.3d 702 (9th Cir.1997).....	19
<i>Pioneer Elecs. (USA), Inc. v. Super. Ct.</i> , 40 Cal.4th 360 (2007).....	11, 16, 17, 18
<i>ReadyLink Healthcare v. Cotton</i> , 126 Cal.App.4th 1006 (2005).....	10
<i>Robbins v. Super. Ct.</i> , 38 Cal.3d 199 (1985).....	9
<i>San Francisco Lab. Council v. Regents of Univ. of Cal.</i> , 26 Cal.3d 785 (1980).....	6
<i>Sheehan v. San Francisco 49ers, Ltd.</i> , 45 Cal.4th 992 (2009).....	16

1	<i>White v. Davis</i> ,	
2	13 Cal.3d 757 (1975).....	11, 13, 15
3	<i>White v. Davis</i> ,	
4	30 Cal.4th 528 (2003).....	9
5	<i>Williams v. Super. Ct.</i> ,	
6	3 Cal.5th 531 (2017).....	11, 12, 16, 18

Constitutional Provisions and Statutes

7	11 CCR § 4283	3
8	Cal. Const., art. 1, § 1	2, 10
9	Code Civ. Proc. § 526	10
10	Code Civ. Proc. § 527(a)	9
11	Penal Code § 11105.....	5
12	Penal Code § 11106(a) (West 1997)	4
13	Penal Code § 11106(a)(1)(A)	3, 4
14	Penal Code § 11106(d)	1, 3, 8, 13, 15
15	Penal Code § 13202(a)	8
16	Penal Code § 14231(a)(1)(A)–(C).....	6
17	Penal Code § 14231(c)	8
18	Penal Code § 28160.....	3, 4
19	Penal Code § 30352.....	5, 6, 8
20	Penal Code § 30352(b)(2)	passim
21	Penal Code § 30452.....	8
22	Penal Code § 30000(c)	8
23	Penal Code § 142315(a)	8
24	Penal Code § 14240(a)	8
25	Welf. & Inst. Code § 8106	8

Other Authorities

26	Assem. Bill No. 1237 (Reg. Sess. 2021–2022), <i>Response to Background Information Request</i> ,	
27	Assem. Comm. on Privacy and Consumer Protection	12
28	Beckett, TheGuardian.com, <i>California attorney general cuts off researchers’ access to gun violence data</i> (March 11, 2021)	7, 8
	Cal. Dep’t of Justice, <i>Gun Sales in California, 1996–2020</i> , https://openjustice.doj.ca.gov/data-stories/gunsales-2020	4

Garfinkel, U.S. Dep’t of Commerce, Nat’l Inst. of Standards & Tech., <i>De-Identification of Personal Information</i> (2015).....	16
Orr, <i>AG Becerra Takes Heat for DOJ’s Move to Restrict Release of Gun Violence Data</i> , KQED (March 12, 2021).....	8, 12
Pear et al., <i>Criminal charge history, handgun purchasing, and demographic characteristics of legal handgun purchasers in California</i> , 8 Injury Epidemiology 7 (2021)	7
Wiley, <i>Gun violence researchers fight California Department of Justice’s plan to withhold data</i> , Sacramento Bee (March 15, 2021).....	7
Wintemute, <i>Guns, violence, politics: the gyre widens</i> , 8 Injury Epidemiology 64 (2021).....	6
Zhang et al., <i>Assembly of the LongSHOT cohort: public linkage on a grand scale</i> , 26 Injury Prevention 153 (2020).....	7

I. INTRODUCTION

In California, all purchasers of firearms must provide extensive personal information at the time of purchase, and that data is stored in the California Department of Justice's ("DOJ") Automated Firearms System ("AFS"). AFS houses this personal identifying information ("PII") for literally millions of Californians, including their fingerprints, home addresses, phone numbers, driver's license information, and other identifying information – all of this along with comprehensive firearm and ammunition purchase and transfer history. Similar PII is collected for ammunition transactions and stored in DOJ's Ammunition Purchase Records File. Indeed, for the past 25 years, California law required gun owners to provide this private data, but had barred DOJ from disclosing it to anyone outside of law enforcement or using it for other than enumerated law enforcement purposes. Plaintiff Doe Brandeis and the members of the institutional plaintiff constitutional rights advocacy organizations (indeed, all similarly situated Californians) have a legally-protected privacy interest in this information. But after promising gun owners for decades that their PII can't and won't be distributed or used for non-law enforcement purposes, the State has not only broken that promise, but caused one of the largest consumer data leaks in history.

With Assembly Bill 173 (AB 173)'s enactment, DOJ is now required to share millions of gun-owning Californians' PII with social scientist activists whose work is focused on generating data to support restrictions on the fundamental right to keep and bear arms, without even notifying them of the disclosure, let alone seeking their consent. Imagine: After being compelled to provide this information to the State in order to exercise their fundamental Second Amendment rights, the privacy rights of these gun owners were steamrolled, with sensitive information about their private lives now compelled to be sent to so-called "researchers" who openly disfavor and seek to limit those choices – people they never agreed to speak with, let alone be the subjects of. Worse still, AB 173 also opens the door for this data to be shared with countless other anti-gun "researchers." This would not be tolerable (nor constitutional) in the context of abortion recipients, or purchasers of Korans or Bibles, or the member roster of the NAACP. And it is not tolerable (nor constitutional) in the context of those who choose to have a gun for self-defense. Plaintiffs thus filed this lawsuit to enjoin the operation of Penal Code sections 11106(d) and 30352(b)(2),

1 recently enacted in AB 173, to protect their personal choices, privacy, and security from people
2 who have no business receiving, possessing, or using this detailed information.

3 AB 173's mandatory data-sharing provisions violate plaintiffs' right to privacy under
4 Article 1, § 1 of the California Constitution, and the post-disclosure use of the information by anti-
5 gun researchers only compounds the violations. The Court should enjoin these disclosures under
6 the *Hill v. Nat'l Collegiate Athletic Ass'n*, 7 Cal.4th 1 (1994), privacy test:

7 1. Individuals have a legally protected privacy interest in the detailed personal
8 information collected by DOJ during firearm and ammunition transactions.

9 2. Individuals purchasing or transferring firearms and ammunition have an objectively
10 reasonable expectation that the information (required to be) provided to and collected by DOJ
11 would not be used for purposes unrelated to law enforcement, much less be disclosed to a private
12 third party, hostile to their interests, for "research" on them.

13 3. The disclosure is a serious invasion of privacy. AB 173 deprives millions of
14 Californians of control over their personal information, which will be actively used, mined, and
15 manipulated without their knowledge or consent.

16 Finally, the State's interest in sharing this private data for "research" cannot outweigh
17 citizens' privacy interests. Even assuming "gun violence" research is a legitimate government
18 objective, it cannot possibly justify the privacy invasion associated with handing PII over to a non-
19 law-enforcement entity that exists to undermine the gun rights of the citizens whose privacy is
20 being invaded. There are effective and feasible alternatives to accomplish such research objectives
21 without sacrificing gun owners' rights, such as providing individuals with the ability to "opt-in" to
22 (or at least the opportunity to opt out of) having their information shared for research purposes, or
23 even anonymizing or de-identifying individual-level data before disclosure. Or the State could
24 simply safeguard the data within DOJ and hire additional Bureau of Firearms staff to conduct
25 research and publish reports and findings not containing sensitive PII.

26 The balance of harms tilts strongly in Plaintiffs' favor. Because the disclosure of personal
27 information can neither be undone nor compensated by monetary damages, the continuing (and
28 likely worsening) privacy violation mandated by AB 173 constitutes irreparable harm. By contrast,

1 the interim harm to the government’s research interest is minimal: While this litigation is pending,
2 DOJ can follow its standard data-sharing procedures and provide researchers with de-identified
3 individual-level data. A preliminary injunction is necessary to preserve the privacy rights of
4 millions of Californians.

5 II. BACKGROUND

6 A. California Law Requires Purchasers Of Firearms And Ammunition To Disclose 7 Extensive Personal Information To DOJ, Which, Until AB 173, Was Required To 8 Maintain The Confidentiality Of This Data And Use It Strictly For Law Enforcement 9 Purposes.

10 In order to buy a firearm or ammunition in California, a purchaser must provide extensive
11 personal identifying information to the vendor, who in turn provides that information to DOJ at the
12 time of the transaction. Various provisions of California law require the Department of Justice to
13 collect a wide array of data related to firearms ownership, and to maintain such information to
14 assist in criminal and civil investigations. Principal among the DOJ’s databases is California’s
15 Automated Firearms System, an omnibus repository of firearm records established by Penal Code
16 section 11106. AFS “is populated by way of firearm purchases or transfers at a California licensed
17 firearm dealer, registration of assault weapons (during specified registration periods), an
18 individual’s report of firearm ownership to the Department, Carry Concealed Weapons Permit
19 records, or records entered by law enforcement agencies.” Cal. Dep’t of Justice, *Automated*
20 *Firearms System Personal Information Update*, <https://oag.ca.gov/firearms/afspi>; *see also* 11 CCR
21 § 4281(d) (defining “Automated Firearm System”). AFS is the state’s most comprehensive
22 database of information about the purchase, sale, transfer, and use of firearms and ammunition.

23 The database includes detailed identifying information (fingerprints, addresses, date and
24 place of birth, driver’s license or identification card number, citizenship status, immigration
25 information, race, sex, height, weight, hair color, eye color) along with all firearm and ammunition
26 transactions associated with each subject. Penal Code §§ 11106(a)(1)(A) (fingerprints) & (D)
27 (Dealers’ Records of Sale of Firearms); 28160 (content of register of firearm transfers); 11 CCR §
28 4283 (information required for basic ammunition eligibility check); *see generally* Cal. Dep’t of
Justice Bureau of Firearms, *Dealer’s Record of Sale (DROS) Worksheet*,
https://des.doj.ca.gov/forms/DROS_Worksheet_BOF-929.pdf. For private-party sales or transfers,

1 AFS includes this information for the seller as well. *See* Penal Code § 28160(a)(36).¹

2 Purchasers of firearms have had to provide this information since 1996 (for handgun
3 transactions) and 2014 (for long guns).² Over the past 25 years, AFS has amassed information
4 covering over 7 million handgun transactions and over 3 million long gun transactions from Dealer
5 Record of Sale (“DROS”) data alone. Cal. Dep’t of Justice, *Gun Sales in California, 1996–2020*,
6 <https://openjustice.doj.ca.gov/data-stories/gunsales-2020>.

7 From the creation of AFS in 1996 until September 2021, California law treated AFS
8 records as confidential and restricted DOJ’s disclosure of PII in the database except when it was
9 necessary to share such information with other government officers to further law-enforcement
10 purposes. The explicit purpose of DOJ’s collection of data in AFS is “to assist in the investigation
11 of crime, the prosecution of civil actions by city attorneys . . . , the arrest and prosecution of
12 criminals, and the recovery of lost, stolen, or found property.” Penal Code § 11106(a)(1).
13 Consistent with this purpose, Section 11106 had always imposed strict conditions on sharing
14 information from within the database. *See* § 11106(a)(2) (providing that the Attorney General
15 “shall furnish the information” in AFS “upon proper application” to specified state officers for
16 criminal or civil law enforcement purposes, including peace officers, district attorneys and
17 prosecutors, city attorneys pursuing civil law enforcement actions, probation and parole officers,
18 public defenders, correctional officers, and welfare officers). Despite several intervening
19 amendments to Section 11106, this limitation on sharing PII had remained consistent since 1996.³

20 ¹ In addition to compiling all information obtained in connection with every firearm and
21 ammunition transaction conducted through a dealer, AFS collects records related to the possession
22 or use of firearms, including: copies of licenses to carry firearms and carry applications; firearm
23 records transmitted to DOJ outside of the electronic DROS process; reports of stolen, lost, or
24 found property; records relating to the ownership of manufactured or assembled firearms; and a
25 registry of private-party firearm loans. *See* Penal Code § 11106(a)(1)(A)–(I).

26 ² As enacted, Section 11106 limited DOJ’s retention of AFS records to “pistols, revolvers, or
27 other firearms capable of being concealed upon the person.” Penal Code § 11106(a), (b)(1), (b)(2),
28 (c)(1) (West 1997). The Legislature expanded AFS to include long guns beginning January 1,
2014. *See* Assem. Bill 809 (2011-2012 Reg. Sess.).

³ *See* Penal Code § 11106(a) (West 1997) (“In order to assist in the investigation of crime, the
arrest and prosecution of criminals, and the recovery of lost, stolen, or found property, the
Attorney General shall keep and properly file” AFS records, “and shall, upon proper application

DOJ’s privacy disclosures have likewise assured Californians that when they submit their PII to DOJ, it will be treated confidentially and generally used for law enforcement purposes or otherwise only shared with government agencies. *See, e.g.,* Cal. Dep’t of Justice, Bureau of Firearms, *Automated Firearms System (AFS) Request for Firearm Records*, p. 2 (Privacy Notice) (stating that, “[i]n order to process a request for firearm records, we may need to share the [personal] information you provide us” with DOJ personnel “upon request,” and that such information may be disclosed “[w]ith other persons or agencies when necessary to perform their legal duties, and their use of your information is compatible with and complies with state law, such as for investigations, licensing, certification, or regulatory purposes,” or “[t]o another government agency as required by state or federal law”); Cal. Dep’t of Justice, Bureau of Firearms, *Personal Firearm Eligibility Check Application*, p. 4 (Privacy Notice) (same).

The expectation of privacy in firearm-related records was reaffirmed by the voters’ enactment of Proposition 63 in 2016, which established a background-check requirement for ammunition transactions. As part of that process, ammunition vendors must collect personal information from each purchaser or transferee (including their driver’s license or identification information, full name and signature, address, telephone number, and date of birth) and transfer that information to DOJ for collection in the “Ammunition Purchase Records File.” Penal Code § 30352(a), (b). Similar to Section 11106, Proposition 63 placed strict limits on the use and disclosure of personal information in the course of ammunition transactions: As enacted by the voters, information collected by DOJ “shall remain confidential and may be used by [DOJ and other law enforcement agencies in Penal Code § 11105] only for law enforcement purposes.” Penal Code § 30352(b).

B. AB 173 Upended This Regime By Now Requiring DOJ To Disclose Detailed Personal Information Of Millions Of California Gun Owners To Non-Law-Enforcement “Researchers” Without Their Knowledge Or Consent.

The California Legislature drastically altered the landscape when it passed Assembly Bill 173 in 2021. The new law requires DOJ to share firearm-related information with the recently-
therefor, furnish to the officers mentioned in Section 11105, hard copy printouts of those records as photographic, photostatic, and nonerasable optically stored reproductions.”).

1 established California Firearm Violence Research Center at UC Davis (the “Center”), and it
2 permits DOJ to share the same information with an unlimited number of other research
3 institutions. AB 173’s private-information-disclosure provisions are codified at Penal Code
4 sections 11106(d) and 30352(b)(2).

5 The Legislature established the Center in 2016. Assem. Bill 1602 (2015-2016 Reg. Sess.).
6 The Center has three research mandates: to study (1) “[t]he nature of firearm violence, including
7 individual and societal determinants of risk for involvement in firearm violence, whether as a
8 victim or a perpetrator”; (2) “[t]he individual, community, and societal consequences of firearm
9 violence”; and (3) “[p]revention and treatment of firearm violence at the individual, community,
10 and societal levels.” Penal Code § 14231(a)(1)(A)–(C).⁴

11 While the legislation authorizing the Center used neutral-sounding language to describe its
12 work, there can be no question that the Center’s social scientists are not neutral on the subject of
13 gun rights and gun owners. The Center’s Director is Dr. Garen Wintemute. Wintemute is one of
14 America’s leading scientific voices in favor of stricter gun control laws. UC Davis Health,
15 *Wintemute Biography*, <https://health.ucdavis.edu/vprp/UCFC/Personnel.html> (describing
16 Wintemute as “a renowned expert on the public health crisis of gun violence”). He recently
17 claimed that the increase in gun purchases during the pandemic posed a threat to our democracy.
18 Wintemute, *Guns, violence, politics: the gyre widens*, 8 Injury Epidemiology 64 (2021) (“Inter-
19 related sustained upward trends in firearm purchasing, violence, and political extremism are
20 converging to put the USA at risk for disaster and threaten our future as a democracy.”).

21 Dr. Amy Barnhorst, one of the Center’s lead investigators who runs its “Bullet Points”
22 project, doesn’t hide her anti-gun-rights views. UC Davis Health, Violence Prevention Research
23 Program, *UCFC Lead Investigators*, <https://health.ucdavis.edu/vprp/UCFC/Personnel.html>. She
24 recently unleashed a Twitter tirade on gun owners and gun rights following the Kyle Rittenhouse
25 trial: Barnhorst said the “verdict is a small tree, but the dark forest here is this country’s
26 permissive firearm laws, pervasive myths that guns keep people safer, and vigilante / militia

27 ⁴ The University of California is a public trust “intended to operate as independently of the state
28 as possible.” *San Francisco Lab. Council v. Regents of Univ. of Cal.*, 26 Cal.3d 785, 789 (1980).

1 culture that encourages ordinary citizens to take up arms to ‘protect’ themselves and others.”
2 <https://bit.ly/3v3Emkq>.

3 This context is important in a case where gun owners’ PII must now be handed over to
4 these anti-gun activists, and may be handed over to countless other opponents of gun rights. In
5 fact, AB 173 was spurred by a dispute between the Center and DOJ over DOJ’s refusal to share the
6 very same PII at issue in this case based on DOJ’s concerns that sharing this data violated gun
7 owners’ privacy rights. See, e.g., Wiley, *Gun violence researchers fight California Department of*
8 *Justice’s plan to withhold data*, Sacramento Bee (March 15, 2021); Beckett, TheGuardian.com,
9 *California attorney general cuts off researchers’ access to gun violence data* (March 11, 2021).

10 In the past, DOJ had provided the Center with confidential gun owner PII in violation of
11 California law: Multiple research papers affirm that the Center obtained and used gun owner PII in
12 violation of Section 11106. See, e.g., Zhang et al., *Assembly of the LongSHOT cohort: public*
13 *linkage on a grand scale*, 26 Injury Prevention 153 (2020) (cross referencing DROS database,
14 voter registration data, and mortality data to link individual-level data of millions of Californians
15 based on their PII); Pear et al., *Criminal charge history, handgun purchasing, and demographic*
16 *characteristics of legal handgun purchasers in California*, 8 Injury Epidemiology 7 (2021) (cross
17 referencing AFS and DROS databases with criminal charge and conviction history based on PII
18 and evaluating individual demographic characteristics including age, race, and sex).

19 In 2020 and 2021, however, DOJ advised the Center that it was going to start complying
20 with the law and no longer provide gun owners’ PII for the Center’s research. Wiley, *supra* (DOJ
21 spokesman stating “[w]e . . . take seriously our duty to protect Californians’ sensitive personally
22 identifying information, and must follow the letter of the law regarding disclosures of the personal
23 information in the data we collect and maintain”); Beckett, *supra* (“it’s precisely this more detailed
24 personal information, including about gun purchasers . . . that Becerra’s justice department is
25 telling some researchers that it will not provide”; DOJ “has cited privacy concerns as a
26 justification for the data restrictions, and has said it believes current California law does not permit
27 the agency to release certain kinds of data to researchers”). DOJ reportedly instructed the Center to
28 delete the PII it possessed from these prior disclosures. Wiley, *supra*.

1 Wintemute lashed out against DOJ's change in position, and he dismissed DOJ's view that
2 disclosing gun owners' PII raised serious privacy issues: "People have started to wonder what
3 other reasons there might be for which privacy is a fig leaf." Beckett, *supra*. Wintemute even took
4 the remarkable position that gun owners' PII is "public information" since it was held by DOJ.
5 Orr, *AG Becerra Takes Heat for DOJ's Move to Restrict Release of Gun Violence Data*, KQED
6 (March 12, 2021). He rallied the Legislature to change the law.⁵

7 AB 173 marked a sweeping change to the privacy afforded to all California firearm and
8 ammunition owners. Among other provisions, AB 173 amended Penal Code 11106(d) to require
9 DOJ to give the Center access to "all information" in AFS "for academic and policy research
10 purposes upon proper request and following approval by the center's governing institutional
11 review board when required." And the bill similarly authorizes DOJ to share this information with
12 "any other nonprofit bona fide research institution accredited by the United States Department of
13 Education or the Council for Higher Education Accreditation for the study of the prevention of
14 violence." Penal Code §§ 11106(d) & 14240(a) (emphasis added); *see also* Penal Code
15 § 30352(b)(2) (providing same information-sharing arrangement for personal information in the
16 Ammunition Purchase Records File).⁶

17 **C. Plaintiffs File Suit Challenging The Constitutionality Of AB 173.**

18 On January 28, 2022, Plaintiffs filed this lawsuit challenging the constitutionality of AB
19

20 ⁵ The Center took the position that it should have been provided PII under Penal Code §
21 14231(c)'s language directing DOJ to "provide to the center, upon proper request, the data
22 necessary for the center to conduct its research," ignoring that such sharing was still "[s]ubject to
23 the conditions and requirements established elsewhere in statute," including Penal Code § 11106.
24 The Center was also subject to DOJ's general data-sharing policies, which permit entities to seek
25 data from certain DOJ databases for research purposes. These databases include criminal offender
26 record information, juvenile court probation records, and gun violence restraining orders – but,
27 consistent with Section 11106's restrictions, AFS data was not included. *See* Cal. Dep't of Justice,
28 *Data Request Process*, <https://oag.ca.gov/research-center/request-process>.

⁶ AB 173 enacted similar information-sharing regimes for several other categories of
information maintained by DOJ, including criminal offender record information (Penal Code
§ 13202(a)); information on people prohibited from owning or possessing firearms or ammunition
based on their criminal or mental health records (Penal Code §§ 30000(c) and 142315(a); Welf. &
Inst. Code § 8106); and information on the sale and transfer of firearm precursor parts (Penal Code
§ 30452(b)(2)). Plaintiffs do not challenge these provisions.

1 173.⁷ Plaintiff Doe Brandeis is a San Diego County resident who has completed multiple firearm
2 and ammunition transactions (purchase, loan, sale, or transfer) through a firearms dealership in
3 California since 2020.⁸ Accordingly, Brandeis is informed and believes that their personal
4 identifying information is contained in AFS and the Ammunition Purchase Records File. Compl., ¶
5 9. Plaintiffs Firearms Policy Coalition, Inc., Second Amendment Foundation, California Gun
6 Rights Foundation, San Diego County Gun Owners PAC, Orange County Gun Owners PAC, and
7 Inland Empire Gun Owners PAC are organizations with members and supporters who live in
8 California and who have personal identifying information in AFS and the Ammunition Purchase
9 Records File. *Id.*, ¶¶ 10–15.

10 Plaintiffs assert three constitutional claims. Plaintiffs bring this motion to enjoin the
11 ongoing violation of their right to privacy under the California Constitution.⁹

12 III. ARGUMENT

13 A. Legal Standard Governing Preliminary Injunctions.

14 “[W]hether a preliminary injunction should be granted involves two interrelated factors: (1)
15 the likelihood that the plaintiff will prevail on the merits, and (2) the relative balance of harms that
16 is likely to result from the granting or denial of interim injunctive relief.” *White v. Davis*, 30
17 Cal.4th 528, 554 (2003). “[T]he more likely it is that plaintiffs will ultimately prevail, the less
18 severe must be the harm that they allege will occur if the injunction does not issue. This is
19 especially true when the requested injunction maintains, rather than alters, the status quo.” *King v.*
20 *Meese*, 43 Cal.3d 1217, 1227 (1987). In considering a request for a preliminary injunction, a trial
21 court “must exercise its discretion in favor of the party most likely to be injured.” *Robbins v.*
22 *Super. Ct.*, 38 Cal.3d 199, 205 (1985) (internal quote and citation omitted).

23 ⁷ Plaintiffs’ verified complaint provides evidence supporting this motion. C.C.P. § 527(a).

24 ⁸ Plaintiff Doe Brandeis proceeds under a fictitious name to protect their privacy rights. *Doe v.*
25 *Super. Ct.*, 3 Cal.App.5th 915, 919 (2016).

26 ⁹ Plaintiffs also assert claims that (1) the Legislature exceeded its authority by making personal
27 information in the DOJ’s statewide ammunition transaction database subject to the same
28 information-sharing arrangement, and (2) by forcing California gun owners to surrender their
privacy rights as a condition to owning a firearm, AB 173 impermissibly burdens the exercise of
the Second Amendment right to keep and bear arms.

1 The Court is specifically authorized to grant an injunction “[w]hen it appears . . . that a
2 party to the action is doing, or threatens, or is about to do, . . . some act in violation of the rights of
3 another party to the action respecting the subject of the action, and tending to render the judgment
4 ineffectual.” Code Civ. Proc. § 526(a)(3); *see, e.g., ReadyLink Healthcare v. Cotton*, 126
5 Cal.App.4th 1006, 1023 (2005) (“court may grant a preliminary injunction when there is evidence
6 of the threat of committing an act in violation of the rights of another party respecting the subject
7 of the action”). And the California Supreme Court has long recognized that injunctive relief is
8 appropriate to prevent enforcement of an unconstitutional or invalid law. *Brock v. Super. Ct.*, 12
9 Cal.2d 605, 609–10 (1939); *Gospel Army v. City of Los Angeles*, 27 Cal. 2d 232, 274 (1945).

10 **B. Plaintiffs Are Likely To Prevail On Their Constitutional Privacy Claim.**

11 “Unlike the federal Constitution, the California Constitution expressly recognizes a right to
12 privacy.” *Mathews v. Becerra*, 8 Cal.5th 756, 768 (2019). In 1972, California voters passed the
13 Privacy Initiative, which added “privacy” to the inalienable enumerated rights set forth in Article I,
14 Section 1 of the California Constitution.¹⁰ In *Lewis v. Super. Ct.*, the California Supreme Court
15 recounted the “principal ‘mischiefs’ that the Privacy Initiative addressed” in language that bears
16 heavily on this case; those mischiefs included: “(1) ‘government snooping’ and the secret
17 gathering of personal information; (2) the overbroad collection and retention of unnecessary
18 personal information by government and business interests; [and] (3) the improper use of
19 information properly obtained for a specific purpose, for example, the use of it for another purpose
20 or the disclosure of it to some third party.” 3 Cal.5th 561, 569 (2017) (citation omitted). Central to
21 the right of privacy “is the ability to control circulation of personal information.” *Mathews*, 8
22 Cal.5th at 769 (citation omitted).

25 ¹⁰ “All people are by nature free and independent and have inalienable rights. Among these are
26 enjoying and defending life and liberty, acquiring, possessing, and protecting property, and
27 pursuing and obtaining safety, happiness, and privacy.” Cal. Const., art. 1, § 1. And because
28 California’s Constitution enumerates a right to privacy, the California Supreme Court has held that
it is broader and more protective of privacy than the unenumerated federal privacy right. *See*
Mathews, 8 Cal.5th at 768–69.

1 The Court set the current framework for a constitutional privacy claim in *Hill v. Nat'l*
2 *Collegiate Athletic Ass'n*, 7 Cal.4th 1 (1994), which built on *White v. Davis*, 13 Cal.3d 757 (1975).
3 Under *Hill*, a privacy claim involves three essential elements: (1) the claimant must possess a
4 legally protected privacy interest; (2) the claimant's expectation of privacy must be objectively
5 reasonable; and (3) the invasion of privacy complained of must be serious in both its nature and
6 scope. *Id.* at 35–37. If a claimant establishes all three required elements, the strength of that
7 privacy interest is balanced against countervailing interests. *Id.* at 37–38. *See also Pioneer Elecs.*
8 *(USA), Inc. v. Super. Ct.*, 40 Cal.4th 360, 371 (2007) (“Assuming that a claimant has met the . . .
9 *Hill* criteria for invasion of a privacy interest, that interest must be measured against other
10 competing or countervailing interests in a ‘balancing test.’”). Specifically, “[t]he party seeking
11 information may raise in response whatever legitimate and important countervailing interests
12 disclosure serves, while the party seeking protection may identify feasible alternatives that serve
13 the same interests or protective measures that would diminish the loss of privacy.” *Williams v.*
14 *Super. Ct.*, 3 Cal.5th 531, 552 (2017); *see Hill*, 7 Cal.4th at 40 (a privacy claimant “may rebut a
15 defendant’s assertion of countervailing interests by showing there are feasible and effective
16 alternatives to defendant’s conduct which have a lesser impact on privacy interests”).

17 **1. Disclosure Of Personal Identifying Information Collected In AFS And The**
18 **Ammunition Purchase Records File Violates Plaintiffs’ Right To Privacy**
 Under The California Constitution.

19 Application of the *Hill* framework confirms that AB 173’s information-sharing regime
20 violates plaintiffs’ privacy rights. AB 173 requires DOJ to hand over the complete AFS and
21 Ammunition Purchase Records File datasets to the Center, and it does so without notice to or
22 consent from the millions of Californians whose private information is being compromised. This
23 disclosure, standing alone, is a substantial privacy violation. The Privacy Initiative’s proponents
24 were attuned to the unique harm arising from the government’s compilation of personal
25 information. *See White*, 13 Cal.3d at 774 (“The proliferation of government snooping and data
26 collecting is threatening to destroy our traditional freedoms. Government agencies seem to be
27 competing to compile the most extensive sets of dossiers of American Citizens.”) (quoting ballot
28 argument). Even then, Californians recognized that technology compounded the threat to privacy:

1 “Computerization of records makes it possible to create ‘cradle-to-grave’ profiles of every
2 American.” *Id.* But as Justices Liu and Kruger recognized in *Lewis*, the concerns motivating the
3 Privacy Initiative are “even more pressing today because advances in data science have enabled
4 sophisticated analyses of curated information as to a particular person.” 3 Cal.5th at 581–82 (Liu,
5 J., joined by Kruger, J., concurring).

6 This is not a hypothetical concern, especially when the PII is turned over to an organization
7 whose leader has stated publicly that he thinks gun owners’ PII is “public information.” Orr, *supra*.
8 The Center will inevitably compound the privacy violation by using the data in at least one of two
9 ways. First, the Center will use the PII to link to other public databases to dig up additional
10 information on gun owners and peer even further into their lives. Indeed, the Center has already
11 done this in the past: When the Center unlawfully obtained confidential information in the past, it
12 linked the detailed information to other databases to build profiles of millions of Californians. In a
13 declaration filed in federal litigation challenging AB 173 under the federal constitutional right to
14 privacy, Wintemute not only confirmed this practice in detail, he celebrated that the PII allowed
15 the Center to “follow” gun owners for years: “In the research I describe here, subjects identified
16 using DROS records are then ‘followed’ (in an administrative sense, making use of those same
17 records and others) over time to see if pre-specified individual outcomes occur.” RJN, Ex. 1
18 Wintemute Decl., ¶ 9, ECF 29–1, *Doe v. Bonta*, No. 3:22-cv-0010-LAB-DEB (S.D. Cal. Feb. 22,
19 2022).

20 Second, the Center will be free to use gun owners’ PII to contact gun owners for surveys or
21 to gather additional information. RJN Ex. 2, Assem. Bill No. 1237 (Reg. Sess. 2021–2022),
22 *Response to Background Information Request* at p. 4, Assem. Comm. on Privacy and Consumer
23 Protection (arguing that PII is necessary for research, in part because “[w]e lower suicide rates in
24 the population . . . by preventing one suicide at a time.”). Multiple cases have recognized that
25 citizens have a strong interest in not having their PII be used to contact them. *Cty. of Los Angeles*
26 *v. Los Angeles Cty. Emp. Relations Comm’n*, 56 Cal. 4th 905, 927 (2013); *Williams*, 3 Cal.5th at
27 554. Doe Brandeis does not want to be contacted by anyone to provide additional information as a
28 result of their gun ownership, let alone from an organization hostile to Second Amendment rights.

1 Plaintiffs readily satisfy the *Hill* test:

2 *Plaintiffs Have A Legally Protected Privacy Interest In The PII Collected In AFS and the*
3 *Ammunition Purchase Records File.* Plaintiff Brandeis and the organizational plaintiffs’ members
4 have a protected privacy interest in the information collected in AFS and Ammunition Purchase
5 Records File, which includes detailed information about individuals, including their fingerprints,
6 home addresses, phone numbers, driver’s license information, and other identifying information –
7 all of this along with comprehensive firearm and ammunition purchase-and-transfer history. The
8 California Supreme Court has long recognized that individuals have a legally protected privacy
9 interest in even a modest subset of this information. *Cty. of Los Angeles v. Los Angeles Cty. Emp.*
10 *Relations Comm’n*, 56 Cal.4th 905, 927 (2013) (recognizing that individuals “have a legally
11 protected privacy interest in their home addresses and telephone numbers” and “a substantial
12 interest in the privacy of their home”).

13 *Plaintiffs Have A Reasonable Expectation Of Privacy In Their PII Transmitted To DOJ*
14 *For Law Enforcement Purposes.* Plaintiffs have an objectively reasonable expectation of privacy
15 in the information contained in AFS and the Ammunition Purchase Records File, particularly in
16 those records that are not otherwise subject to public disclosure.¹¹ Individuals purchasing or
17 transferring firearms and ammunition have a reasonable expectation that the information provided
18 to and collected by DOJ in the course of a transaction would not be used for purposes unrelated to
19 law enforcement or disclosed to a third party. This strikes at the heart of one of the “principal
20 mischiefs” the Privacy Initiative sought to address: “the improper use of information properly
21 obtained for a specific purpose” and then used “for another purpose” or disclosed to “some third
22 party.” *White*, 13 Cal.3d at 775. AFS includes a wealth of information that most Californians
23 undoubtedly consider highly personal (like fingerprints, home addresses, and driver’s license
24 numbers). But AFS goes beyond just capturing a snapshot of such personal information, it
25 represents a compilation of information over time: An individual’s AFS record contains their

26
27 ¹¹ Certain categories of information encompassed within AFS, such as concealed carry licenses or
28 criminal record information, are subject to public disclosure separate and apart from Section
11106(d).

1 entire history of firearm and ammunition transactions – so disclosure also reveals the subject’s past
2 addresses and, to a certain extent, their associations (by showing the personal information of every
3 person who engaged in a firearm or ammunition transaction with the subject).

4 Plaintiffs’ expectation of privacy is confirmed by the longstanding statutory restriction in
5 Section 11106 limiting DOJ’s disclosure of AFS information except for sharing within the
6 government for criminal and civil law enforcement purposes. This expectation was reaffirmed by
7 the voters’ enactment of Proposition 63 in 2016, which explicitly provided that personal
8 information collected by DOJ for ammunition transactions “shall remain confidential and may be
9 used . . . only for law enforcement purposes.” Penal Code § 30352(b)(2). This “longstanding and
10 consistent practice” restricting the use of PII collected for firearm and ammunition transactions to
11 law enforcement purposes supports Plaintiffs’ reasonable expectation that their information would
12 not be used for unrelated purposes. *Cty. of Los Angeles*, 56 Cal.4th at 927–28.

13 *Sharing Personal Identifying Information In AFS and the Ammunition Purchase Records*
14 *File Is A Serious Invasion Of Plaintiffs’ Privacy*. AB 173 mandates a serious privacy invasion. At
15 a minimum, the data being transferred is going to be actively used, mined, and manipulated for so-
16 called research and statistical purposes. Strangers at the Center – and other “bona fide” researchers
17 – will now know intimate details about millions of law-abiding Californians who were given no
18 advance notice that their personal information would be shared and who had no opportunity to opt
19 out of the disclosure. As discussed above, the Center has already used gun owners’ PII to dig into
20 other databases to develop dossiers on gun owners without their knowledge.

21 Moreover, the California Supreme Court has held that the mere disclosure of contact
22 information is sufficiently “serious” to support a constitutional claim because it could lead to
23 unwanted contact from a third party. *Cty. of Los Angeles*, 56 Cal.4th at 929–30. The same prospect
24 exists here, as contacting individuals is entirely consistent with the broad statutory mandate of
25 “research” – all the more so considering the legislative history’s statements that the ultimate goal
26
27
28

1 here is to support studies into the “prevention of violence.”¹²

2 *AB 173’s Information-Sharing Regime Does Not Survive The Interest-Balancing Inquiry.*
3 Balancing the government’s research interest against the intrusion on Plaintiffs’ privacy
4 demonstrates that Penal Code sections 11106(d) and 30352(b)(2) are unconstitutional.

5 First, the purpose of disclosing personal personal identifying information in AFS and the
6 Ammunition Purchase Record File is at odds with the reason the sensitive information was
7 collected. *Lewis*, 3 Cal.5th at 569 (Privacy Initiative was aimed at “improper use of information
8 properly obtained for a specific purpose” by “us[ing] of it for another purpose” “disclos[ing] it to
9 some third party”); *see White*, 13 Cal.3d at 774 (citing ballot argument; the right of privacy
10 “prevents government and business interests from collecting and stockpiling unnecessary
11 information about us and from misusing information gathered for one purpose in order to serve
12 other purposes”). DOJ collects the information in AFS and the ammunition database for use in
13 criminal or civil investigations. *See* Penal Code § 11106(a)(1) (AFS information compiled “to
14 assist in the investigation of crime, the prosecution of civil actions . . . , [and] the arrest and
15 prosecution of criminals”); Penal Code § 30352(b)(1) (ammunition records database “shall remain
16 confidential” and “may be used . . . “only for law enforcement purposes”). AB 173 requires DOJ
17 to share this information for another purpose (research) and directs DOJ to share it with third
18 parties (the Center and other “bona fide” researchers). This bait and switch strikes at the core of
19 what the constitutional right to privacy is meant to protect against.

20 Second, the scope of a potential privacy violation is significant. AFS and the Ammunition
21 Purchase Records File contain a vast amount of detailed PII that AB 173 requires DOJ to share
22 with outside researchers. As Justices Liu and Kruger observed, when passing the privacy initiative,
23 “[t]he voters were concerned that their privacy was violated whenever their personal information
24

25 ¹² In supporting a companion bill, Brady dismissed privacy concerns by stating they “betray[] a
26 fundamental lack of understanding of what constitutes rigorous science,” and went on to argue that
27 “[w]e lower suicide rates in the population . . . by preventing one suicide at a time.” Assembly Bill
28 1237 *Response to Background Information Request* at p. 4. Claiming that PII is necessary to
prevent suicide or firearm violence at the individual level only makes sense if the researchers
intend to use personal information to contact individuals.

1 was used or accessed without reason,” and “[t]his concern is even more pressing today because
2 advances in data science have enabled sophisticated analyses of curated information as to a
3 particular person.” *Lewis*, 3 Cal.5th at 581 (Liu, J., joined by Kruger, J., concurring). That is
4 precisely the risk guaranteed by AB 173’s information-sharing regime: The vast amount of
5 personal information contained in DOJ’s databases allows researchers to compound the privacy
6 violation by linking it with other data, both today and in the future.

7 Third, the State has several feasible alternatives to achieve its interests that have a lesser
8 impact on Plaintiffs’ privacy interests. *Sheehan v. San Francisco 49ers, Ltd.*, 45 Cal.4th 992, 998
9 (2009) (plaintiff can rebut an intruder’s assumed justification by “demonstrating the availability
10 and use of protective measures, safeguards, and alternatives to the defendant’s conduct that would
11 minimize the intrusion on privacy interests”) (quoting *Hill*, 7 Cal.4th at 28). At the very least,
12 individuals should be given notice of each data request and provided an opportunity to opt out of
13 having their information shared with researchers. *See Hill*, 7 Cal.4th at 36, 37; *Pioneer*, 40 Cal.4th
14 at 373–74; *Williams*, 3 Cal.5th at 555. In addition, DOJ could restrict sharing of PII by
15 implementing protective procedures that anonymize or de-identify data shared with researchers.¹³
16 This could include, for example, assigning subject codes in lieu of sharing names, driver’s license
17 or identification card numbers, or other unique identifiers; and using higher-level geographic data
18 (such as ZIP Codes or city- or county-level data) in lieu of home addresses.

19 Fourth, if the State believes this research is important, the Legislature could authorize
20 DOJ’s Bureau of Firearms to hire its own researchers to conduct studies in house, thereby at least
21 reducing the scope of the privacy violation here.¹⁴ The State’s efficiency interest in offloading this
22 research to an outside organization cannot justify the privacy incursion.

23 ¹³ *See, e.g.*, Garfinkel, U.S. Dep’t of Commerce, Nat’l Inst. of Standards & Tech., *De-*
24 *Identification of Personal Information* 15–16, 19–21 (2015) (discussing methods of deidentifying
25 structured datasets).

26 ¹⁴ Plaintiffs do not and need not concede that such an alternative regime raises no privacy
27 concerns. We raise the prospect only to illustrate that the research can be conducted in a manner
28 less harmful to plaintiffs’ privacy interests. *See Hill*, 7 Cal.4th at 38 (a plaintiff may
“demonstrate[e] the availability and use of protective measures, safeguards, and alternatives to the
defendant’s conduct that would minimize the intrusion on privacy interests”); *id.* at 40 (a plaintiff

1 **2. The California Supreme Court’s Treatment Of Less-Sensitive Personal**
2 **Contact Information In Discovery Cases Confirms That AB 173’s**
3 **Information-Sharing Regime Is Unconstitutional.**

4 A trio of the California Supreme Court’s leading privacy cases permitting the disclosure of
5 personal contact information offer a useful contrast to AB 173’s untailored regime. The first is
6 *Pioneer Electronics*, where the Court considered the discoverability of nonparty contact
7 information in a consumer class action case. 40 Cal.4th 360 (2007). Plaintiffs sought discovery of
8 other customers who had filed complaints about defective DVD players. *Id.* at 363–65. The Court
9 concluded that there was no invasion of privacy under those circumstances, particularly because
10 (1) the consumers had already voluntarily disclosed their information to Pioneer, and (2) affected
11 consumers would be given notice of the proposed disclosure and a chance to object. *Id.* at 372–74.
12 The court emphasized that consumers’ interests were furthered by disclosure: “complainants might
13 reasonably expect, and even hope, that their names and addresses would be given to [a] class
14 action plaintiff.” *Id.* at 372

15 Next, in *County of Los Angeles v. Los Angeles County Employee Relations Commission*,
16 the Court reached a similar conclusion in permitting disclosure of non-member contact information
17 to a public employee union. 56 Cal.4th 905 (2013). The Court first noted that the disclosure posed
18 a “more significant privacy invasion” than in *Pioneer* because nonmembers had “chosen not to
19 join [the union] and have declined in the past to give their contact information.” *Id.* at 930; *see also*
20 *id.* (highlighting the notice and opt-out procedure in *Pioneer* that “mitigated any privacy
21 invasion”). On the interest-balancing inquiry, the Court held that the union’s duty of fair
22 representation to all employees (including nonmembers) justified the privacy invasion because
23 direct communication with nonmembers was essential. *Id.* at 931. Thus, as in *Pioneer*, the Court
24 assumed that sharing nonmembers’ contact information with the union promoted their interests.
25 On the other side of the balance, nonmembers suffered only a “mild” privacy intrusion by
26 disclosure of their contact information based on the “common practice of disclosure [of home
27 contact information to the union] in other settings.” *Id.* at 932. But the Court was careful to

28 _____
 “may rebut a defendant’s assertion of countervailing interests by showing there are feasible and
 effective alternatives to defendant’s conduct which have a lesser impact on privacy interests”).

1 highlight that the “balance might, in some cases, tip in favor of privacy when an individual
2 employee objects and demands that home contact information be withheld.” *Id.*

3 Finally, in *Williams*, the Court extended *Pioneer*’s logic to permit discovery of employee
4 contact information in wage-and-hour class action cases. The Court rested its conclusion on two
5 main points. First, the public policy in favor of effective enforcement of employment laws favored
6 disclosure. 3 Cal.5th at 553. And in the context of a collective action, disclosure furthered the
7 absent employees’ interests: “[F]ellow employees would not be expected to want to conceal their
8 contact information from plaintiffs asserting employment law violations.” *Id.*; *see id.* at 554
9 (“fellow employees ‘might reasonably expect, and even hope, that their names and addresses
10 would be given to’ a plaintiff seeking to vindicate their rights” (quoting *Pioneer*)). Second, privacy
11 concerns were mitigated because – as in *Pioneer* – the absent employees were given notice and the
12 opportunity to opt out of disclosure. *Id.* at 555.

13 The guiding principles supporting disclosure in each of these cases cut the other way here.
14 In each case, there was a nexus between the subject and the purpose of the disclosure that reduced
15 the magnitude of the privacy violation. Unlike a consumer who complained about a defective
16 product or an aggrieved employee who might profit from class-action litigation, gun owners
17 obviously have no preexisting relationship with research institutions that would justify sharing
18 their personal information. There is no reason to think that millions of Californians would want
19 their detailed personal information to be shared for a purpose that does not directly benefit them
20 (as in a class action case, or with collective bargaining) and could be used instead to harass them.
21 To the contrary, every inference runs in the opposite direction: They affirmatively do not want
22 their PII disclosed to hostile social scientist researchers.

23 Beyond that, there is no safety valve to ensure individual privacy is protected. In both
24 *Pioneer* and *Williams*, individuals were provided with notice of the impending disclosure and
25 given the opportunity to opt out and protect their privacy. But here disclosure is done in the dark,
26 with no notice and no opportunity to object. Individuals have been stripped of all control over
27 their personal information. And of course, the array of personal information implicated by AB 173
28

1 is far more vast and sensitive than the mere contact information involved in these three cases – and
2 the magnitude of the privacy invasion is correspondingly greater.

3 In short, Penal Code sections 11106(d) and 30352(b) violate plaintiffs’ right to privacy.

4 **C. Plaintiffs Are Entitled To An Injunction To Preserve Their Constitutional Rights.**

5 Because Plaintiffs have demonstrated a high likelihood of prevailing, the Court can and
6 should issue injunctive relief. *Common Cause v. Bd. of Supervisors*, 49 Cal.3d 432, 447 (1989).
7 Consideration of the remaining preliminary injunctive factors reinforces that conclusion.

8 The risk of interim harm heavily favors Plaintiff Brandeis and the organizational plaintiffs’
9 members, who face a certain, significant, imminent, and repeated privacy intrusion by DOJ’s
10 sharing of personal identifying information with the Center and other researchers. Such disclosure
11 deprives millions of Californians of “the ability to control circulation of personal information,”
12 which is “[f]undamental to our privacy.” *Mathews*, 8 Cal.5th at 769. Precisely because the
13 disclosure of personal information cannot be compensated by monetary damages, courts across the
14 country have long recognized that such privacy violations constitute irreparable harm justifying
15 injunctive relief.¹⁵ To that same end, the federal courts recognize that “an alleged constitutional
16 infringement will often alone constitute irreparable harm.” *Monterey Mech. Co. v. Wilson*, 125
17 F.3d 702, 715 (9th Cir.1997) (citation and quotation marks omitted).

18 The prospect of harm over and above the harm associated with the initial disclosure is all
19 the more evident given the DOJ’s recent history of mishandling similar confidential information.
20 The United States Supreme Court’s decision in *Americans for Prosperity Foundation v. Bonta*,
21 141 S.Ct. 2373 (2021), highlighted these risks. In *Bonta*, charitable donors argued that mandated
22 disclosure *to the DOJ itself* (not a third party) of their name, contact information, and donation
23 amounts violated their First Amendment associational rights. The State’s vague law enforcement
24 justifications for collecting the information did not justify the disclosure requirements’ chilling

25
26 ¹⁵ See, e.g., *Airbnb, Inc. v. City of New York*, 373 F.Supp.3d 467, 499 (S.D.N.Y. 2019)
27 (“disclosure of private, confidential information ‘is the quintessential type of irreparable harm that
28 cannot be compensated or undone by money damages”); *Maxcrest Ltd. v. United States*, 2016 WL
6599463, at *4 (N.D. Cal. Nov. 7, 2016) (harm to plaintiff’s “privacy interests would be
irreparable . . . once that information has already been divulged”).

1 effect, and DOJ's assurances that it could keep the information confidential "r[a]ng hollow" in
2 light of several data breaches. *Id.* at 2388 n.*. DOJ's inevitable assurances in this case – that the
3 Center and other researchers hostile to gun owners' Second Amendment rights will safeguard their
4 information – will ring even more hollow. All the more so when the Center's Director has
5 dismissed privacy concerns on the theory that gun owners' PII is "public information."

6 On the other side of the balance, the interim harm to the government's research interest is
7 minimal and can be accommodated by requiring DOJ to provide de-identified individual-level data
8 from the databases and to notify Californians of any pending disclosures and provide them with
9 the opportunity to opt out of disclosure.

10 IV. CONCLUSION

11 For the reasons set forth above, the Court should grant Plaintiffs' motion for a preliminary
12 injunction enjoining DOJ from sharing PII collected in AFS pursuant to Penal Code section
13 11106(d) and the Ammunition Purchase Records File pursuant to Penal Code section 30352(b)(2),
14 and ordering DOJ to retrieve all PII previously transferred to the Center or any other organization.

15 Dated: March 3, 2022

BENBROOK LAW GROUP, PC

16
17 By 

BRADLEY A. BENBROOK
Attorneys for Plaintiffs