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9
 10 IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11
 12 CALIFORNIA RIFLE & PISTOL
 ASSOCIATION, INCORPORATED;
 13 THE SECOND AMENDMENT
 FOUNDATION; GUN OWNERS OF
 14 AMERICA, INC.; GUN OWNERS
 FOUNDATION; GUN OWNERS OF
 15 CALIFORNIA, INC.; ERICK
 VELASQUEZ, an individual;
 16 CHARLES MESSEL, an individual;
 BRIAN WEIMER, an individual;
 17 CLARENCE RIGALI, an individual;
 KEITH REEVES, an individual;
 18 CYNTHIA GABALDON, an individual;
 and STEPHEN HOOVER, an
 19 individual,

20 Plaintiffs,

21 v.

22 LOS ANGELES COUNTY SHERIFF'S
 DEPARTMENT; SHERIFF ROBERT
 23 LUNA, in his official capacity; LA
 VERNE POLICE DEPARTMENT; LA
 24 VERNE CHIEF OF POLICE
 COLLEEN FLORES, in her official
 25 capacity; ROBERT BONTA, in his
 official capacity as Attorney General of
 26 the State of California; and DOES 1-10,

27 Defendants.
 28

2:23-cv-10169

**DEFENDANT ROB BONTA'S
 OPPOSITION TO PLAINTIFFS'
 MOTION FOR PRELIMINARY
 INJUNCTION**

Date: March 13, 2024
 Time: 1:30 p.m.
 Courtroom: 5C
 Judge: The Honorable Sherilyn
 Peace Garnett

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INTRODUCTION

Plaintiffs move for a preliminary injunction on Second Amendment and other grounds. As to Defendant Bonta, the motion is narrow: Plaintiffs assert that California’s concealed carry weapon (“CCW”) licensing scheme “must recognize out-of-state CCW permits.” ECF No. 20-1 (“Mem.”) at 18 (emphasis omitted).¹ Plaintiffs fail to show that they are likely to succeed in establishing that California’s CCW licensing scheme violates the Constitution. The Second Amendment does not preclude states from ensuring that individuals licensed to carry a concealed weapon in public are responsible, law-abiding citizens. The Supreme Court confirmed as much in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022). Nor does the Second Amendment require states to displace their own licensing regimes by honoring out-of-state licenses or otherwise catering to non-residents. Subject to certain constitutional limits, each state remains free to regulate public carry in the manner that best suits the needs of its populace.

To the extent Plaintiffs also challenge the statutory provision authorizing local licensing authorities to require psychological testing,² that claim is meritless as well. Because Plaintiffs cannot show a likelihood of success on the merits of their claims and do not meet the remaining factors for injunctive relief, this Court should deny the motion for a preliminary injunction.

¹ Despite asserting that non-residents may not apply for a California CCW license, Plaintiffs do not seek any relief on this front in their Motion (ECF No. 20) or Proposed Order (ECF No. 20-28). *See* Fed. R. Civ. P. 7(b)(1)(B), (C) (moving party must state the relief sought and grounds for order “with particularity”); C.D. Cal. Civ. L.R. 7-4 (similar); *Starks v. Cnty. of Los Angeles*, 2022 WL 1344986, *1 (C.D. Cal. March 28, 2022) (denying motion as “unacceptably ambiguous with respect to the relief requested” where relief sought in motion was inconsistent with relief sought in proposed order).

² Although Plaintiffs briefly reference the psychological assessment statute (California Penal Code § 26190(e)), Mem. at 2, the motion focuses on their as-applied challenge, Mem. at 17–18, and the Proposed Order does not seek to enjoin § 26190(e) on its face, ECF No. 20-28.

BACKGROUND

Following *Bruen*, California enacted Senate Bill 2 (reg. sess. 2023-2024) to implement a shall-issue permitting regime for the concealed carry of firearms. SB 2 amended certain aspects of the CCW licensing scheme, but left others unchanged.³ Penal Code § 26150 allows applicants who meet certain criteria to apply for a CCW license in the county or city where they are a “resident” or where their “principal place of employment or business” is located. Cal. Penal Code § 26150(a)(3). And under § 26190, local licensing authorities may refer the applicant “to a licensed psychologist” and evaluate “the results of [such] psychological assessment” when carrying out their obligation to ensure that the applicant is not “reasonably likely to be a danger to self, others, or the community at large.” *Id.* §§ 26190(e), 26202(a)(1). These aspects of the scheme—which were part of the initial CCW licensing scheme and remained unchanged by SB 2—have been in effect for at least twelve years. *See* S.B. 1080, Stats. 2010, c. 711, § 6; Cal. Penal Code §§ 26150(a)(3), 26190(f) (2012).

SB 2 was enacted on September 26, 2023 and took effect on January 1, 2024. Plaintiffs filed their motion for a preliminary injunction on January 26, 2024. ECF No. 20.

LEGAL STANDARD

“A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). A plaintiff seeking a preliminary injunction must demonstrate “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.” *Id.* at 20. Because Plaintiffs seek relief that would change the status quo, their request is “subject to heightened scrutiny and should not be issued

³ For the complete text, see https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB2.

1 unless the facts and law clearly favor” them. *Dahl v. HEM Pharms. Corp.*, 7 F.3d
2 1399, 1403 (9th Cir. 1993).

3 ARGUMENT

4 I. PLAINTIFFS ARE UNLIKELY TO SUCCEED ON THE MERITS

5 A. The *Bruen* Framework

6 In *Bruen*, the Supreme Court announced a new standard for adjudicating
7 Second Amendment claims “centered on constitutional text and history.” 597 U.S.
8 at 22. Under this text-and-history approach, courts must first determine that “the
9 Second Amendment’s plain text covers an individual’s conduct.” *Id.* at 24. If it
10 does, “the Constitution presumptively protects that conduct,” and “[t]he
11 government must then justify its regulation by demonstrating that it is consistent
12 with the Nation’s historical tradition of firearm regulation.” *Id.*

13 Yet the Second Amendment is not a “regulatory straightjacket.” *Bruen*, 597
14 U.S. at 30. It does not prevent states from adopting a “‘variety’ of gun regulations,”
15 *id.* at 80 (Kavanaugh, J., concurring) (quoting *Dist. of Columbia v. Heller*, 554 U.S.
16 570, 636 (2008)), or “experiment[ing] with reasonable firearms regulations” to
17 address threats to the public, *McDonald v. City of Chicago*, 561 U.S. 742, 785
18 (2010) (plurality opinion). And governments need not identify “a historical *twin*”
19 or “dead ringer” to support a modern law—only a history or tradition of “relevantly
20 similar” regulation. *Bruen*, 597 U.S. at 29–30 (quotation marks omitted).

21 *Bruen* “decide[d] nothing about who may lawfully possess a firearm or the
22 requirements that must be met to buy a gun” and did not disturb any of the Court’s
23 prior statements “about restrictions that may be imposed on the possession or
24 carrying of guns.” *Bruen*, 597 U.S. at 72 (Alito, J., concurring); *see also id.* at 81
25 (Kavanaugh, J., concurring) (“[N]othing in our opinion should be taken to cast
26 doubt on longstanding prohibitions on the possession of firearms by felons and the
27 mentally ill” (quoting *Heller*, 554 U.S. at 626–27 & n.26)). And *Bruen* made
28 clear that “nothing in [its] analysis” called into question licensing regimes as a

1 whole. *Id.* at 38 n.9 (majority op.). Indeed, the Court expressly approved of
 2 licensing regimes “designed to ensure” that “those bearing arms in the jurisdiction
 3 are, in fact, ‘law-abiding, responsible citizens,’” including laws requiring “a
 4 background check” or “firearms safety course.” *Id.* (quoting *Heller*, 554 U.S. at
 5 635).

6 **B. Out-of-State Licenses**

7 **1. States May Maintain Licensing Schemes and Approaches** 8 **May Vary from State to State**

9 Plaintiffs contend that the Second Amendment requires California to honor
 10 CCW licenses issued in other jurisdictions and request a preliminary injunction
 11 barring public officials from enforcing “California Penal Code § 25850(a) against
 12 individuals who have unexpired CCW permits valid in *any other state* in the United
 13 States, or valid in the District of Columbia.” Proposed Order at 3 (emphasis
 14 added). Nothing in the text of the Second Amendment protects a traveler’s right to
 15 rely on a foreign license to carry within the State of California. *See Bruen*, 597
 16 U.S. at 17 (textual inquiry examines whether “Second Amendment’s plain text
 17 covers an individual’s conduct”). Indeed, in *Bruen*, the Supreme Court explicitly
 18 stated that “nothing in [its] analysis should be interpreted to suggest the
 19 unconstitutionality of” the 43 different “‘shall issue’ licensing regimes” then in
 20 effect. *Id.* at 38 n.9. These regimes vary in their particulars, and include some that
 21 do not recognize licenses from other states (*e.g.*, 430 Ill. Comp. Stat. Ann. 66/40) as
 22 well as some that do not allow non-residents to apply (*e.g.*, Colo. Rev. Stat. Ann.
 23 §§ 18-12-203(1)(a), 18-12-206). *Bruen*, 597 U.S. at 13 & n.1.

24 *Bruen* indicated that shall-issue licensing schemes—even those that differ
 25 from state to state—pass muster at the first step of the Court’s two-step framework
 26 because these schemes merely ensure that those authorized to publicly carry “are, in
 27 fact, ‘law-abiding, responsible citizens.’” *Id.* at 38 n.9 (quoting *Heller*, 554 U.S. at
 28 635). Until an individual has been confirmed as law-abiding and responsible in the

1 jurisdiction where he or she proposes to carry, that individual does not
2 presumptively fall within “the people” to whom the Second Amendment refers. *See*
3 *Bruen*, 597 U.S. at 31–32 (no dispute that plaintiffs were part of “the people”
4 because they were “ordinary, law-abiding, adult citizens”); *Heller*, 554 U.S. at 635
5 (Second Amendment protects “the right of law-abiding, responsible citizens to use
6 arms”).

7 That *Bruen* approves of states imposing licensing requirements that “are
8 designed to ensure only that those bearing arms in the jurisdiction are, in fact, ‘law-
9 abiding, responsible citizens’”—*i.e.*, the ‘people’—is not surprising. *Bruen*, 597
10 U.S. at 38 n.9 (quoting *Heller*, 554 U.S. at 635). Although the Supreme Court has
11 defined the outer bounds of permissible regulations, it has not “abrogate[d]” states’
12 “core responsibility” of “[p]roviding for the safety of citizens within their borders.”
13 *Kolbe v. Hogan*, 849 F.3d 114, 150 (4th Cir. 2017) (en banc) (Wilkinson, J.,
14 concurring) (quoting *Heller*, 554 U.S. at 635), *abrogated on other grounds by*
15 *Bruen*, 597 U.S. 1. Indeed, the Supreme Court has repeatedly affirmed the
16 important role states play in regulating firearms, consistent with our Nation’s
17 historical tradition. In *Heller*, the Court made clear that the right to keep and bear
18 arms is “not unlimited”; states still possess “a variety of tools” to combat the
19 problem of gun violence in a way that is responsive to the needs of their
20 communities. 554 U.S. at 626, 636. The Court reiterated this point in *McDonald*,
21 emphasizing that the Second Amendment “by no means eliminates” a state’s
22 “ability to devise solutions to social problems that suit local needs and values.” 561
23 U.S. at 785. Recognizing that “conditions and problems differ from locality to
24 locality,” *id.* at 783, the Court made clear that “state and local experimentation with
25 reasonable firearms regulations” could and should continue “under the Second
26 Amendment,” *id.* at 785 (marks omitted).

27 *Bruen* reaffirmed these principles, specifically in the licensing context. And
28 because each state remains free to enact a licensing regime tailored to the needs of

1 its populace, nothing in the Supreme Court’s Second Amendment jurisprudence
2 supports the notion that a state must accept licenses issued by other jurisdictions
3 which may have very different licensing requirements (or no requirements at all).
4 Plaintiffs’ proposed rule—that every state must recognize CCW licenses issued by
5 every other state, *see* Proposed Order at 3—cannot be reconciled with *Heller*,
6 *McDonald*, and *Bruen*. Such a rule would also potentially allow a single state to
7 nullify the laws of its co-equal sovereigns simply by relaxing its own licensing
8 rules—or eliminating them altogether. Taken to its logical conclusion, Plaintiffs’
9 argument would eviscerate the State’s right to impose *any* CCW licensing
10 requirements because even a citizen of a “constitutional carry” state—who has not
11 undergone any background check or any firearm training, Mem. at 6—would be
12 entitled to carry a concealed weapon in California. *Bruen*—which “all but
13 confirmed that states may require people to obtain licenses before they carry
14 firearms in public,” *Baird v. Bonta*, --- F. Supp. 3d ----, 2023 WL 9050959, at *22–
15 26 (E.D. Cal. Dec. 29, 2023)—disclaims such a result.

16 Plaintiffs cite no relevant authority for their position. Instead, they argue that
17 *Obergefell v. Hodges*, 576 U.S. 644 (2015), presented an “analogous issue.” Mem.
18 at 19. That suggestion is misplaced. Based on principles of equal protection and
19 substantive due process, *Obergefell* held that all states were “required by the
20 Constitution to issue marriage licenses to same-sex couples.” 576 U.S. at 680.
21 Ancillary to that holding, the Court also concluded that there was “no lawful basis
22 for a State to refuse to recognize a lawful same-sex marriage performed in another
23 State on the ground of its same-sex character.” *Id.* at 681. Unlike in *Obergefell*,
24 California is not refusing anyone a license based on a protected trait. California’s
25 CCW licensing scheme merely ensures that local licensing authorities have access
26 to all information necessary to verify an individual’s eligibility to lawfully carry
27 arms in California. *See infra* Part I.B.
28

2. There Is a Historical Tradition of Local Firearm Regulation, Including Restricting Licenses

Even if this court were to reach the second step of the *Bruen* analysis, California’s approach finds ample support in historical tradition. Firearm regulation at the state and local level is a longstanding American tradition, and that tradition includes localized approaches to licensing.⁴ *See generally* Joseph Blocher, *Firearm Localism*, 123 Yale L.J. 82 (2013). Visitors have always been subject to local laws; if a person during the founding or Reconstruction eras were carrying a firearm, they would have had to comply with a local jurisdiction’s laws when they reached its border, regardless of any differing laws in their home state or locality.

From the 1700s to the early 1900s, public carry laws prohibited carrying concealed weapons in particular localities. Spitzer Decl. ¶ 18; Rivas Decl. ¶ 16. In 1686, New Jersey prohibited wearing weapons “privately.” Grants, Concessions, and Original Constitutions of The Province of New Jersey 289-90 (1881). In 1795, Massachusetts authorized the arrest of anyone who “shall ride or go armed offensively, to the fear or terror of the good citizens of this commonwealth,” 1795 Mass. Acts 436, ch. 2, which encompassed the “mere act of traveling armed” with a firearm, Saul Cornell, *The Long Arc of Arms Regulation in Public: From Surety to Permitting, 1328-1928*, 55 U.C. Davis L.R. 2573–74 (2022). And in 1801, Tennessee enacted a law providing that anyone who “shall ride or go armed to the terror of the people, or privately carry any . . . dangerous weapon to the fear or terror of any person” without a surety, would be punished or jailed. 1801 Tenn. Laws 259–60, ch. 22, § 6.

It was not uncommon for municipalities to have different policies governing particularly lethal weapons than the state as a whole, based on each locality’s

⁴ This tradition continues in modern times. *See, e.g.*, Cal. Penal Code §§ 26150(a), 26202(b) (setting forth statewide criteria for local licensing authorities to apply and “minimum requirements” for investigation thereof).

particular needs and interests. Rivas Decl. ¶¶ 40, 52–54; Spitzer Decl. ¶ 17. For instance, an 1837 Mississippi law authorized the town of Sharon to enact “the total inhibition of the odious and savage practice” of carrying dirks, Bowie knives, or pistols. 1837 Miss. Laws 294, § 5.⁵ In 1849, San Francisco enacted a prohibition on carrying deadly weapons, 1849 Cal. Stat. 245, div. 11, § 127.⁶ Between 1870 and 1917, municipalities ranging in size from Los Angeles and San Francisco to Lompoc and St. Helena issued carry licenses to qualified applicants, despite there being no comparable statewide law. Rivas Decl. ¶ 53. Immediately after the Civil War, several Texas towns of varying size enacted ordinances against the carrying of weapons, and state lawmakers encouraged them to do so. *Id.*⁷ And Kansas’s deadly weapon policy specifically authorized towns to regulate the carrying of weapons “concealed or otherwise.” *Id.*; see also C. B. Pierce, *Charter and Ordinances of the City of Leavenworth, with an Appendix* 45 (1863), § 23. Municipalities across the country followed suit with their own local firearm regulations during Reconstruction. Vorenberg Decl. ¶¶ 18–19. These laws reflected the local nature of restrictions on the carriage of firearms.

State and local licensing laws further confirm the history and tradition underlying California’s CCW licensing scheme. Licensing laws date back to the 1700s⁸ and became more wide-ranging and widespread in the 1800s⁹ and early 1900s, when governing units began to relax comprehensive carry restrictions and

⁵ See also 1839 Miss. Laws 385–86, ch. 168, § 5 (town of Emery); 1840 Miss. Laws 180–81, ch. 111, § 5 (town of Hernando).

⁶ See also 1851 Pa. Laws 382, no. 239, § 4 (Philadelphia).

⁷ It was not until 1870–1871 that Texas pursued a statewide gun-safety policy by enacting a sensitive places law along with a public carry law. Rivas Decl. ¶ 53.

⁸ For instance, the colony (and then state) of Pennsylvania enacted a series of laws in the early-to-mid 1700s for licensing the discharge of a firearm, and the colony of Connecticut enacted a gunpowder licensing law in 1775. Spitzer Decl. ¶ 40, Ex. B.

⁹ These included firearm discharge licensing requirements in Charleston, South Carolina; Portsmouth, New Hampshire; Schenectady, New York; Marietta, Ohio; New London and New Haven, Connecticut; Quincy, Illinois; Jeffersonville, Indiana; and Richmond, Virginia. Spitzer Decl. ¶ 41.

1 allow legal weapons carrying through licensing, subject to review by local officials
 2 who were empowered to grant carry licenses. Spitzer Decl. ¶ 20. Licensing
 3 allowed localities to tailor prohibitions to public safety threats and gather relevant
 4 information about who was publicly carrying, instead of just prohibiting carrying or
 5 use of firearms outright. *Id.*

6 By the Reconstruction era, municipalities across the country began enacting
 7 their own licensing schemes. For instance, in 1866, the mayor of Memphis,
 8 Tennessee issued permits for the carrying of concealed weapons. Vorenberg Decl.
 9 ¶ 28. St. Louis, Missouri and New Orleans, Louisiana followed suit shortly
 10 thereafter. *Id.*; Spitzer Decl. ¶ 21. In the 1870s and 1880s, Jersey City, New
 11 Jersey; Elko, Nevada; Omaha, Nebraska; Hyde Park, Nashville, and Chicago,
 12 Illinois; New York City, New York; Ironton, Missouri; Arkansas City and Beloit,
 13 Kansas; Astoria, Oregon; Wheeling, West Virginia; St. Paul, Minnesota; Salt Lake
 14 City, Utah; and Eureka, Napa, Sacramento, and San Francisco, California
 15 established permitting systems as well. Spitzer Decl. ¶¶ 22–28; Vorenberg Decl.
 16 ¶¶ 29–33. Other municipalities around the country followed suit in the ensuing
 17 decades, including in Connecticut, California, Nebraska, Washington, Wisconsin,
 18 and the District of Columbia. Spitzer Decl. ¶¶ 29–31, 34–36. State-wide licensing
 19 schemes were also enacted in the late 1800s and early 1900s, including in Florida,¹⁰
 20 Montana, New Jersey, Hawaii, Indiana, Michigan, New Hampshire, North
 21 Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, and South
 22 Carolina. *Id.* ¶¶ 32–33, 37–38.

23
 24
 25 ¹⁰ Citing one concurrence that purports to “know something of the history of
 26 th[e Florida] legislation” without further citation, *id.* at 703 (Buford, J., concurring),
 27 Plaintiffs discount all early permitting laws as allegedly race-based. Mem. at 16.
 28 But they do not (and cannot) dispute that the licensing schemes existed. *Id.* And in
Watson v. Stone, 4 So.2d 700 (Fl. 1941) (en banc), the Florida Supreme Court
 overturned a conviction under the scheme not based on any Second Amendment
 claim, but because, as a matter of statutory construction, the law did not apply to
 the defendant’s conduct.

1 Many early licensing laws, by their terms, did not recognize licenses from
 2 other localities or allow non-residents to apply. For instance, a Georgia law made it
 3 “unlawful for any person to have or carry about his person, in any county in the
 4 State of Georgia, any pistol or revolver without first taking out a license from the
 5 Ordinary of the respective counties in which the party resides, before such person
 6 shall be at liberty to carry around with him on his person, or to have in his manual
 7 possession outside of his own home or place of business.” 1910 Ga. Laws 134, No.
 8 432. An Oregon law required anyone purchasing a pocket pistol or revolver in
 9 Oregon to “have a permit . . . signed by the municipal judge or city recorder of the
 10 city or county judge or a justice of the peace of the county wherein such person
 11 resides.” 1913 Or. Laws 497, ch. 256. And a West Virginia law required anyone
 12 wanting to carry dangerous or deadly weapons (including pistols) in West Virginia
 13 not only “to obtain a state license to carry,” but to have been “a *bona fide* resident
 14 of [that] state for at least one year” and “of the county” in which they filed their
 15 application applied for “sixty days.” 1925 W.Va. Acts 25, ch. 3, § 7(a).¹¹
 16 Municipalities offered licenses only to residents as well. *See, e.g.*, Charles H.
 17 Hamilton, ed., *The General Ordinances of the City of Milwaukee to January 1,*
 18 *1896* 692–93, § 25 (allowing the chief of police to grant a license to any eligible
 19 person “residing within the city of Milwaukee”); *Madison, Charter & General*
 20 *Ordinances* 292 (1917), ch. 22, § 2 (same for Madison). These more recent laws—
 21 which are not only consistent with carry restrictions of the past, but are a direct
 22 outgrowth of them, Spitzer Decl. ¶¶ 13, 20—confirm that California’s CCW
 23 licensing scheme fits comfortably within the Nation’s history and tradition of
 24 firearm regulation. *See Bruen*, 597 U.S. at 36; *Antonyuk v. Chiumento*, 89 F.4th
 25 271, 319 n.32 (2d Cir. 2023) (“[W]hen laws which otherwise might be too recent
 26 when considered in isolation nonetheless reflect previously settled practices and

27 ¹¹ *See also, e.g.*, 1912 N.J. Laws 364–66, ch. 225; 1921 Mo. Laws 692, H.B.
 28 168, § 2.

1 assumptions, they remain probative as to the existence of an American tradition of
2 regulation.”).

3 Plaintiffs refer to “traveler’s exceptions” in historical concealed carry laws,
4 Mem. at 21, but misunderstand their meaning. The type of “travel” contemplated
5 by these exceptions separated individuals from the protections of organized society
6 and subjected them to uniquely rural dangers like highway robbers or predatory
7 animals. Rivas Decl. ¶¶ 27–29.¹² And the definition of “travel” was limited to the
8 period when a person was actually on their “journey” but had not yet arrived in the
9 next locale. *Id.* ¶¶ 30–31.¹³ Finally, mirroring current federal firearm
10 transportation requirements, *see* 18 U.S.C. § 926A, even exempted travelers were
11 required to store their weapons in their baggage in Texas. *Id.* ¶ 26. In other words,
12 “traveler” was a designation for those who were isolated from communities during
13 the particular timeframe in which they were en route from one place to another and
14 might have a travel-specific, emergent need to use a firearm. That is not the kind of
15 “travel” in which Plaintiffs purportedly wish to engage here, and thus statutes
16 containing a “traveler’s exception” provide no support for their argument.

17 **3. California’s CCW Scheme Does Not Violate the Privileges** 18 **and Immunities Clause**

19 “Separately from” their Second Amendment argument, Plaintiffs claim that
20 the lack of CCW licensing for non-residents violates the right to travel and the
21 Privileges and Immunities Clause. Mem. at 20. These claims are one and the same.

22
23 ¹² *See Ellington v. Denning*, 138 S.W. 453, 453 (Ark. 1911) (recognizing
24 that, in “modern civilization,” there were “no perils of the highway against which
the traveler needs for protection a deadly weapon,” and it was “absurd to say that he
needs a pistol to protect himself from attack”).

25 ¹³ The law of at least one jurisdiction provided that if purported “travelers
26 stop at any settlement for a longer time than fifteen minutes they” are no longer
“actually prosecuting their journey,” and therefore “shall remove all arms from
their person or persons, and not resume the same until upon eve of departure.”
27 1887 Terr. of N.M. Laws, § 9; *see also Rosaman v. City of Okolona*, 37 So. 641,
641-42 (Miss. 1905) (individual who arrived in town Friday evening was “not a
28 traveler” on Saturday).

1 Although Plaintiffs characterize the right to travel as rooted in equal protection, *id.*,
 2 the Supreme Court has made clear that Plaintiffs’ claim—“the right to be treated as
 3 a welcome visitor” in a state—derives from the Privileges and Immunities Clause.
 4 *Saenz v. Roe*, 526 U.S. 489, 500–01 (1999) (cited at Mem. 20); *see also Peterson v.*
 5 *Martinez*, 707 F.3d 1197, 1213 (10th Cir. 2013) (holding right-to-travel claim based
 6 on CCW licensing residency requirement to be “coterminous with [the] privileges
 7 and immunities argument”); *Bach v. Pataki*, 408 F.3d 75, 87 (2d Cir. 2005) (“[T]he
 8 ‘right to travel,’ at least in [the firearm licensing] context, is simply a shorthand for
 9 the protections of the Privileges and Immunities Clause of Article IV . . .”),
 10 *overruled on other grounds by McDonald*, 561 U.S. 742.

11 Plaintiffs’ Privileges and Immunities Clause claim is meritless. States “must
 12 accord residents and nonresidents equal treatment” “only with respect to those
 13 privileges and immunities bearing on the vitality of the Nation as a single entity” or
 14 “sufficiently basic to the livelihood of the Nation.” *Super. Ct. of N.H. v. Piper*, 470
 15 U.S. 274, 279 (1985) (marks omitted); *Super. Ct. of Va. v. Friedman*, 487 U.S. 59,
 16 64 (1988) (quotation marks omitted). State and local governments have long
 17 restricted the concealed carry of firearms, *see supra* Part I.B.2, which demonstrates
 18 that such carry does not meet that standard. *See Peterson*, 707 F.3d at 1216
 19 (pointing to “the fact that concealed carry was prohibited for resident and non-
 20 resident alike for much of our history” as evidence that it was not “sufficiently
 21 basic to the livelihood of the Nation” (quotation marks omitted)).

22 Even assuming that CCW licensing implicates some right protected by the
 23 Privileges and Immunities Clause, California’s CCW licensing scheme would be
 24 constitutional. A state may deprive nonresidents of a protected privilege where
 25 there is substantial reason to justify the discriminatory impact and the state’s
 26 approach bears a substantial relationship to its objective. *See, e.g., Barnard v.*
 27 *Thorstenn*, 489 U.S. 546, 552 (1989). California’s requirement that an individual
 28 apply for a CCW license in the county where they live or work meets that standard.

1 Various conditions disqualify an individual from holding a California CCW
2 license, including being convicted of certain crimes; abusing controlled substances;
3 and being the subject of a domestic restraining order. *See* Cal. Penal Code
4 § 26202(a). The licensing agency must review “information provided by the
5 [California] Department of Justice” to determine whether the individual is
6 disqualified by these criteria at the outset, *id.* subs. (b)(5), and the license must be
7 revoked if a licensee later becomes disqualified for any reason, *id.*
8 § 26195(b)(1)(D). In other words, licensing agencies must continuously monitor
9 the eligibility of CCW license holders to ensure that “those bearing arms in the
10 jurisdiction are, in fact, ‘law-abiding, responsible citizens.’” *Bruen*, 597 U.S. at 38
11 n.9 (quoting *Heller*, 554 U.S. at 635). And the State has an interest “in continually
12 obtaining relevant behavioral information” to do so. *Bach*, 408 F.3d at 91.

13 Declining to recognize out-of-state CCW licenses and requiring an individual
14 to be a resident of California to obtain a California CCW license both serve this
15 monitoring objective. While California is privy to relevant behavioral information
16 about its own residents on an ongoing basis, it does not necessarily have access to
17 that information for non-residents. *See Culp v. Raoul*, 921 F.3d 646, 657 (7th Cir.
18 2019) (describing “monitoring barrier” and “information deficit” as to non-
19 residents); *Bach*, 408 F.3d at 92 (“The State can only monitor those activities that
20 actually take place in New York.”). And it is “self-evident” that states with
21 different licensing requirements “need not engage in monitoring of [their] licensees
22 similar to [California’s] monitoring.” *Bach*, 408 F.3d at 92–93. For instance, an
23 individual subject to a restraining order could continue to hold their Alaska CCW
24 permit, despite not meeting California’s criteria. *See* Alaska Stat. § 18.65.705.
25 And although Plaintiffs concede that non-residents “who are prohibited from
26 owning firearms” may not do so “regardless of if they acquired a CCW permit prior
27 to becoming prohibited,” Proposed Order at 3, they do not explain how California
28 would necessarily know as much.

At least two circuits have thus concluded that states need not recognize out-of-state CCW licenses or permit non-residents to apply to satisfy the Privileges and Immunities Clause. *See Culp*, 921 F.3d at 657–58; *Bach*, 408 F.3d at 91–94.¹⁴ And a district court in this circuit came to the same conclusion. *See Peruta v. Cnty. of San Diego*, 758 F. Supp. 2d 1106, 1119–20 (S.D. Cal. 2010), *aff’d*, 824 F.3d 919 (9th Cir. 2016) (en banc).¹⁵ *Bruen* does not change the outcome in these cases; it has no bearing on the justifications the State may present in the second part of a Privileges and Immunities analysis. Given this body of federal precedent, the out-of-state trial court opinion cited by Plaintiffs is not persuasive. Mem. at 21–22 (discussing *Commonwealth v. Donnell*, No. 2211CR2835 (Mass. Dist. Ct. Aug. 3, 2023), *application for immediate Supreme Judicial Court review granted*, DAR-29602 (Mass.)).¹⁶

C. Option to Require Psychological Testing

1. Plaintiffs Have Not Raised and Cannot Raise a Facial Challenge

Plaintiffs do not appear to facially challenge the option for licensing agencies to require psychological testing. *See supra* n.2. Any belated attempt by Plaintiffs to enjoin the statute in its entirety should be rejected.

Even if Plaintiffs had challenged California’s psychological assessment statute on its face, they would be unlikely to succeed on the merits of that claim. Facial

¹⁴ Another upheld a requirement that an applicant be a resident of the state before applying for a CCW license under the first part of the Privileges and Immunities analysis. *Peterson*, 707 F.3d at 1215–16.

¹⁵ At the first of the two-step test applied to Second Amendment claims pre-*Bruen*, the Ninth Circuit held that the Second Amendment did not apply to carrying concealed firearms in public. *Peruta*, 824 F.3d at 927, 939. The court did not separately evaluate the residency argument or the district court’s Privileges and Immunities analysis. *See id.* at 942.

¹⁶ The *Donnell* court disregarded the *Bruen* concurrences and failed entirely to discuss footnote 9 of the majority opinion. Mem. of Decision on Def.’s Mot. to Dismiss at 4 & n.3. And while the court found that the Commonwealth had “not point[ed] to any historical precedent for” “disarming [an] individual while he is traveling within the state,” *id.* at 5, the record here demonstrates the opposite, *see supra* Part I.B.2.

1 challenges are “disfavored.” *Wa. State Grange v. Wa. State Republican Party*, 552
 2 U.S. 442, 450 (2008). They are “the most difficult challenge[s] to mount
 3 successfully, since the challenger must establish that no set of circumstances exists
 4 under which the [law] would be valid.” *United States v. Salerno*, 481 U.S. 739, 745
 5 (1987); *Wa. State Grange*, 552 U.S. at 449 (“[A] facial challenge must fail where
 6 the statute has a plainly legitimate sweep.” (quotation marks omitted)).

7 Plaintiffs have not even attempted to meet the *Salerno* standard. Plaintiffs’
 8 motion is focused on La Verne’s specific psychological assessment requirements.
 9 Mem. at 17–18. Plaintiffs do not and cannot show that there is no individual for
 10 whom a local licensing authority somewhere in California could require a
 11 psychological assessment in connection with their CCW license application.
 12 Indeed, there could be any number of reasons a licensing authority would need a
 13 psychological assessment to confirm that an individual is a “law-abiding,
 14 responsible citizen[]” who is not “likely to be a danger to self, others, or the
 15 community at large.” *Bruen*, 597 U.S. at 26, 38 n.9 (quoting *Heller*, 554 U.S. at
 16 635); Cal. Penal Code § 26202(a)(1). *Bruen* clearly contemplates that states may
 17 investigate applicants before issuing a CCW license. *Bruen*, 597 U.S. at 80
 18 (Kavanaugh, J., concurring) (“[S]hall-issue regimes may require a license applicant
 19 to undergo fingerprinting, a background check, a mental health records check, and
 20 training in firearms handling and in laws regarding the use of force, among other
 21 possible requirements.”). Plaintiffs’ failure to make a clear showing (or any
 22 showing) that no set of circumstances exists in which the psychological assessment
 23 statute is constitutional is fatal to their motion. *See Salerno*, 481 U.S. at 745.

24 **2. The Psychological Assessment Statute Does Not Implicate** 25 **the Second Amendment’s Plain Text**

26 In any event, the psychological assessment statute passes constitutional
 27 muster. As a threshold matter, the option to require psychological testing does not
 28 fall within the Second Amendment’s plain text because it does not prevent any

1 “people” from “keep[ing]” or “bear[ing]” “Arms” for lawful purposes. U.S. Const.
 2 amend. II. California’s psychological assessment statute provides local licensing
 3 authorities with a means of determining whether a CCW applicant “[i]s reasonably
 4 likely to be a danger to self, others, or the community at large,” Cal. Penal Code
 5 § 26202(a)(1), to ensure that the applicant is the type of “law-abiding, responsible
 6 citizen[]” entitled to Second Amendment rights, *Bruen*, 597 U.S. at 26, 38 n.9
 7 (quoting *Heller*, 554 U.S. at 635).

8 The Court need look no further than *Bruen* itself for examples of
 9 presumptively constitutional licensing requirements that resemble § 26202(a)(1).
 10 Although *Bruen* struck down New York’s “proper cause” provision—which
 11 required “a special need for self-protection” to obtain a firearm permit—it did not
 12 invalidate New York’s “good moral character” requirement. *Bruen*, 597 U.S. at
 13 11–12 (acknowledging (without criticizing) New York’s requirement that an
 14 applicant prove they are “of good moral character”). *Bruen* also approvingly cited
 15 three similar licensing statutes: (1) a Delaware statute requiring applicants to be “of
 16 full age and good moral character”; (2) a Connecticut statute prohibiting the
 17 granting of licenses to applicants “lacking the essential character or temperament
 18 necessary to be trusted with a weapon”; and (3) a Rhode Island statute requiring
 19 proof that the applicant “is a suitable person to be so licensed.” *Id.* at 13 n.1.
 20 Indeed, *Bruen* favorably referenced at least 21 licensing laws that authorize
 21 officials to deny licenses to persons “found not to be law-abiding or responsible
 22 based on a determination that the applicant lacks the character or temperament to
 23 carry firearms in public spaces or otherwise presents a danger to self, others, or the
 24 community at large.” SB 2, § 1(c).¹⁷ And *Bruen* also makes clear that states may
 25 require all applicants to take affirmative steps to demonstrate their license

26 ¹⁷ See *Bruen*, 597 U.S. at 13 n.1 (citing such laws in Alabama, Arkansas,
 27 Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Maine,
 28 Minnesota, Missouri, Montana, North Dakota, Oregon, Pennsylvania, Rhode
 Island, South Dakota, Utah, Virginia, and Wyoming).

1 eligibility. *See* 597 U.S. at 38 n.9 (approving of licensing regimes that “require
2 applicants to . . . pass a firearms safety course”).

3 California’s psychological assessment statute falls comfortably within the
4 spectrum of licensing requirements approved by *Bruen*. Because the statute is
5 designed to ensure that public carry is limited to law-abiding, responsible citizens,
6 it does not implicate the Second Amendment’s plain text.

7 **3. The Psychological Assessment Statute Is Consistent with** 8 **the Historical Tradition of Firearm Regulation**

9 California’s psychological assessment statute is also consistent with the well-
10 established historical tradition of regulating the carry of weapons by persons
11 perceived to be untrustworthy, dangerous, or mentally unstable.

12 Firearm regulation, including of particular groups, dates back to at least the
13 sixteenth century. The English Bill of Rights, which has “long been understood to
14 be the predecessor to our Second Amendment,” *Heller*, 554 U.S. at 593, permitted
15 Protestants to carry arms for self-defense only “as allowed by law.” 1 W. & M., c.
16 2, § 7, in 3 Eng. Stat. at Large 441 (1689). And British common law granted
17 people a right to have arms for self-defense “suitable to their condition and degree”
18 and “under due restrictions.” 1 William Blackstone, *Commentaries on the Laws of*
19 *England* 139. The “necessary restraints” on this right were intended to prevent
20 harm to the armed person or others. *Id.* at 140. The tradition of prohibiting persons
21 deemed dangerous or mentally unstable from having and bearing arms was also
22 carried over from England to early America, as founding-era colonies and states
23 disarmed persons thought to pose “immediate threats to public safety and stability.”
24 *Kanter v. Barr*, 919 F.3d 437, 458 (7th Cir. 2019) (Barrett, J., dissenting).

25 Weapons laws did not regulate mentally ill persons—usually referenced with
26 the term “unsound mind”—until the modern field of psychology was established in
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1 the late 1800s and early 1900s. Spitzer Decl. ¶ 52 & n.79, Ex. D.¹⁸ But before the
 2 advent of modern psychology, there was already a tradition of regulating persons
 3 who exhibited “aberrant or abnormal behavior.” These individuals were often
 4 identified in the law as “vagrants,” “tramps,” and the “intoxicated,” and were
 5 “singled out [] as a suspect category with respect to weapons acquisition and use.”
 6 *Id.* ¶¶ 52–56, 58–72, Exs. E, F (citing laws); *see also* Rivas Decl. ¶¶ 56–63
 7 (discussing traditional use of “dangerousness” as acceptable disqualifier in
 8 historical licensing regimes). Under the historical understanding of those terms,
 9 individuals identified by law as “vagrants” or “tramps” undoubtedly included some
 10 who today would be considered as suffering from mental illness. Spitzer Decl.
 11 ¶ 53.

12 Throughout American history, governmental authorities at every level have
 13 enacted laws to prevent persons deemed dangerous or mentally unstable from
 14 bearing arms. These laws are analogous to California’s psychological assessment
 15 statute, which similarly seeks to protect the public from violence and disorder by
 16 ensuring that only law-abiding, responsible citizens publicly carry dangerous
 17 weapons.

18 **4. The Psychological Assessment Statute Is Not Impermissibly** 19 **Discretionary or a Violation of Due Process**

20 Rather than engaging in the analysis mandated by *Bruen*, Plaintiffs make
 21 conclusory assertions that the psychological assessment requirement is “inherently
 22 subjective and discretionary” and violates due process. Mem. at 17–18. Both
 23 contentions fail.

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 26 ¹⁸ Prior regulation was likely unnecessary because persons of “unsound
 27 mind” were often physically isolated from the community through home or
 28 institutional confinement and would not have had the ability to carry firearms in
 public. Gerald N. Grob, *The Mad Among Us: A History of the Care of America’s*
Mentally Ill 5–21, 29, 43 (1994); Mary Ann Jimenez, *Changing Faces of Madness:*
Early American Attitudes and Treatment of the Insane 92, 103–04 (1987).

1 The psychological assessment statute is not impermissibly discretionary.
2 Mem. at 17. The assessments must be performed by “licensed psychologist[s],”
3 who have specialized training and are bound by professional standards and
4 guidelines when administering and evaluating the results. *See* Cal. Penal Code
5 § 26190(e)(1); American Psychological Association, “APA GUIDELINES FOR
6 PSYCHOLOGICAL ASSESSMENT AND EVALUATION” 5 (“Psychologists are guided by
7 professional standards of practice in engaging in psychological testing, assessment,
8 and evaluation to be compliant with competency expectations and to avoid harm to
9 clients.”), *available at* <https://www.apa.org/practice/guidelines/>. Such professional
10 standards ensure that the assessments are performed in a fair, objective, and
11 consistent manner. In any event, “*Bruen* does not forbid discretion in licensing
12 regimes—on the contrary, the *Bruen* Court specifically stated that its decision did
13 not imperil the validity of more than a dozen licensing schemes that confer
14 discretion” upon licensing authorities. *Antonyuk*, 89 F.4th at 312; *id.* at 318–20
15 (collecting historical licensing laws that authorized discretion in granting or
16 denying firearms licenses).

17 Finally, Plaintiffs’ nominal claim that the psychological assessment statute
18 deprives them of “full due process rights, including judicial hearings, evidentiary
19 standards, the right to call supporting witnesses, and the right of appeal” (Mem. at
20 18) lacks merit. Under Penal Code § 26206, any person whose application for a
21 CCW permit is denied is entitled to petition the superior court, during which the
22 government bears the burden of proving that the applicant is not entitled to a
23 license. That procedure satisfies due process.

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II. THE REMAINING PRELIMINARY INJUNCTION FACTORS WEIGH AGAINST AN INJUNCTION

A. Plaintiffs Fail to Show Irreparable Harm

“At a minimum, a plaintiff seeking preliminary injunctive relief must demonstrate . . . irreparable harm.” *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). Plaintiffs’ only claimed irreparable harm is the alleged deprivation of their constitutional rights. Mem. at 23. But as explained above, none of the laws at issue violate Plaintiffs’ Second Amendment or any other rights. And the requirements Plaintiffs now challenge have been in effect for many years. Plaintiffs’ “long delay before seeking a preliminary injunction implies a lack of urgency and irreparable harm.” *Miller for & on Behalf of N.L.R.B. v. Cal. Pac. Med. Ctr.*, 991 F.2d 536, 544 (9th Cir. 1993) (quotation marks omitted). Plaintiffs’ failure to make this required showing mandates denial of their motion.

B. The Equities and Public Interest Do Not Support an Injunction

The balancing of the equities and the public interest—which merge when the government is a party, *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)—weigh against an injunction. “Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (marks omitted). That is especially true here, where the challenged laws serve the State’s compelling interest in public safety by ensuring that only law-abiding, responsible citizens publicly carry concealed weapons. *See Tracy Rifle & Pistol LLC v. Harris*, 118 F. Supp. 3d 1182, 1193 (E.D. Cal. 2015) (public interest favored the government because an injunction would have a detrimental effect on gun crime and violence), *aff’d*, 637 F. App’x 401 (9th Cir. 2016).

As discussed above, California’s CCW licensing scheme is constitutionally sound, so enjoining any aspect of it neither redresses any constitutional injury nor

1 serves any public interest. To the contrary, an injunction would hamper the State’s
 2 strong public safety interest in enforcing sensible regulations on the public carry of
 3 concealed weapons. “[S]tudies overwhelmingly support the conclusion that more
 4 carrying of firearms in public leads to an increase in crime: of the 35 social science
 5 studies looking at this issue since . . . 2005, 23 found an increase in crime” SB
 6 2, § 1(i). According to one study, in the 33 states with permissive “right-to-carry”
 7 laws, “violent crime was substantially higher—13 to 15 percent higher—10 years
 8 after the laws were adopted than it would have been” otherwise. *Id.* § 1(d). And
 9 “[l]aws requiring an assessment of dangerousness in connection with obtaining
 10 firearms have saved lives.” *Id.* § 1(l).¹⁹

11 The balance of equities and public interest strongly favor preserving a
 12 licensing scheme that prevents firearm violence by reasonably regulating the
 13 issuance of CCW licenses. Enjoining, even temporarily, California’s ability to
 14 thoroughly evaluate and monitor whether each CCW applicant is a law-abiding,
 15 responsible citizen would be detrimental to public safety.

16 CONCLUSION

17 Plaintiffs’ motion for preliminary injunction should be denied.²⁰

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 24 ¹⁹ Plaintiffs’ contention that CCW permit holders “are an overwhelmingly
 25 law-abiding demographic” misses the mark. Mem. at 24. To the extent that is true,
 26 it is because California’s licensing regime effectively limits the issuance of CCW
 permits to law-abiding, responsible citizens. Thus, Plaintiffs actually underscore the
 necessity for the challenged statute.

27 ²⁰ If the Court were inclined to issue an injunction, the Attorney General
 respectfully requests that the injunction be stayed pending appeal to “suspend[]
 28 judicial alteration of the status quo” during the appellate process. *See F.T.C. v.*
Qualcomm Inc., 935 F.3d 752, 757 (9th Cir. 2019) (quotation marks omitted).

1 Dated: February 21, 2024

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendant Rob Bonta, certifies that this brief contains 7,000 words, which complies with the word limit of L.R. 11-6.1.

Dated: February 21, 2024

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CERTIFICATE OF SERVICE

Case Name: ***California Rifle & Pistol Ass'n,
Inc., et al. v. Los Angeles County
Sheriff's Department, et al.***

Case No. **2:23-cv-10169**

I hereby certify that on February 21, 2024, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- 1. DEFENDANT ROB BONTA'S OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**
- 2. DECLARATION OF PROFESSOR BRENNAN GARDNER RIVAS IN SUPPORT OF DEFENDANT ROB BONTA'S OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**
- 3. DECLARATION OF PROFESSOR ROBERT SPITZER IN SUPPORT OF DEFENDANT ROB BONTA'S OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**
- 4. DECLARATION OF PROFESSOR MICHAEL VORENBERG IN SUPPORT OF DEFENDANT ROB BONTA'S OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on February 21, 2024, at San Francisco, California.

M. Mendiola
Declarant


Signature