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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

KIM RHODE, et al.,  
Plaintiffs,  
v.  
ROB BONTA, in his official capacity as  
Attorney General of the State of  
California,  
Defendant.

Case No.: 18-cv-802-BEN (JLB)  
  
ORDER  
DENYING REQUEST FOR STAY

Defendant requests a stay of this Court’s Decision and permanent injunction pending appeal, or in the alternative, a 10-day administrative stay. The Defendant says that, “[i]f the Decision is allowed to stay in effect, it would irrevocably alter the status quo by enjoining enforcement of laws that have been in effect for over four years; allowing prohibited California residents to acquire ammunition during the appeal; and jeopardizing public safety.”

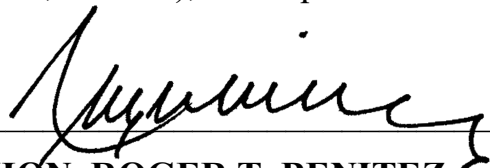
“A stay is not a matter of right, even if irreparable injury might otherwise result. It is instead ‘an exercise of judicial discretion,’ and ‘the propriety of its issue is dependent upon the circumstances of the particular case.’” *Nken v. Holder*, 556 U.S. 418, 433 (2009). In exercising its discretion, a court is to be guided by four legal principles or factors: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the

1 proceeding; and (4) where the public interest lies.” *Id.* “The first two factors . . . are the  
2 most critical.” *Id.* at 434. The Defendant here has not shown a strong likelihood of  
3 success on the merits, *i.e.*, the first factor, or the likelihood of irreparable injury, the  
4 second factor.

5 As to the first factor, the Defendant’s case on the merits is weak, failing both the  
6 interest balancing test and the history and tradition test. As to the second factor, the  
7 Defendant argues irreparable injury will occur without a stay because prohibited  
8 California residents will be able to acquire ammunition during the appeal. “[S]imply  
9 showing some ‘possibility of irreparable injury,’ fails to satisfy the second factor. . . , the  
10 ‘possibility’ standard is too lenient.” *Id.* at 434-35 (citations omitted). While there is the  
11 possibility that prohibited California residents will be able to acquire ammunition without  
12 a stay, there continues to exist criminal laws against the possession of ammunition by  
13 prohibited persons under both state and federal law. This Court’s decision in no way  
14 affects those laws and the Defendant is free to continue to enforce the same.  
15 Consequently, the second factor does not weigh in favor of a stay. The third and fourth  
16 factors weigh heavily against granting a stay as the enjoined laws are infringing on the  
17 constitutional rights of citizens.

18 This Court has given the State plenty of opportunity and time to provide analogues  
19 or other evidence to demonstrate the validity of its ammunition background check laws.  
20 The Decision simply requires a return to the status quo ante litem as it existed prior to the  
21 effective dates of SB1235 and Proposition 63. Having considered the relevant factors,  
22 and for many of the same reasons articulated in this Court’s Order denying a stay of the  
23 preliminary injunction order (filed Apr. 24, 2020, Dkt. 62), the request for a stay pending  
24 appeal and an administrative stay is denied.

25 DATED: January 31, 2024

26   
27 **HON. ROGER T. BENITEZ**  
28 United States District Judge