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8
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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 CLARE RICHARDS; ALISHA
13 CURTIN; DAKOTA ADELPHIA;
14 MICHAEL SCHWARTZ; DARIN
15 PRINCE; NORTH COUNTY
16 SHOOTING CENTER, INC.; JOHN
17 PHILLIPS; PWGG, L.P.; SAN DIEGO
18 COUNTY GUN OWNERS PAC;
19 CALIFORNIA GUN RIGHTS
20 FOUNDATION; FIREARMS POLICY
21 COALITION, INC.; and SECOND
22 AMENDMENT FOUNDATION,

23 *Plaintiffs,*

24 v.

25 ROB BONTA, in his official capacity as
26 Attorney General of California; and
27 ALLISON MENDOZA, in her official
28 capacity as Director of the California
Department of Justice Bureau of
Firearms,

Defendants.

Case No.: '23CV0793 LAB WVG

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1 **INTRODUCTION**

2 1. A right delayed is a right denied. But denying access to fundamental
3 rights is precisely what Defendants Attorney General Rob Bonta, and his Director of
4 the California Department of Justice (“DOJ”) Bureau of Firearms, Allison Mendoza,
5 do through their enforcement of California’s unconstitutional Waiting Period Laws
6 that individually and collectively infringe upon the right to keep and bear arms.¹

7 2. Typical law-abiding individuals in California cannot lawfully acquire a
8 firearm to exercise their constitutionally protected right to keep and bear arms without
9 first going in-person to a federally and state-licensed firearm dealer, applying for the
10 transfer of a firearm, and suffering at least a 10-day ban on the possession of that
11 arm—even when the State has confirmed, often within minutes of the application, that
12 the person is eligible to acquire firearms. Then, if the Defendants affirmatively allow
13 the transfer, the buyer must go back to the dealership to take possession of the firearm
14 no sooner than 10 days after submitting the application.² And California’s firearm
15 dealers must strictly comply with the State’s regulatory scheme on pain of criminal
16 liability and loss of their license to do business.

17 3. In short, Defendants’ enforcement of the Waiting Period Laws prevents
18 law-abiding people from taking possession of lawfully acquired firearms for
19 immediate self-defense and other lawful purposes—even after Defendants know the
20 individual is eligible to exercise their fundamental, constitutionally protected right to

21 _____
22 ¹ Cal. Penal Code §§ 26815(a), 27540, and Defendants’ regulations, policies, and
23 enforcement practices implementing them are hereinafter collectively referred to as
the “Waiting Period Laws” or “WPLs.”

24 ² The second visit to the dealer must be at least ten (10) 24-hour periods after the
25 Defendants receive a completed application, but may not more than thirty (30) days
26 after the process starts, or, under federal law, the background check expires, and the
27 process must start over. *See also* JUDGMENT GRANTING PETITION FOR WRIT OF
28 MANDATE, *Campos v. Bonta*, San Diego Super. Ct. Case No. 37-2020-0030178 (Aug.
8, 2022) (finding that Defendants’ practice of delaying firearms transactions beyond
the statutorily authorized period violated state law).

1 keep and bear arms. This relegates the right to keep and bear arms to second-class
2 status. But nearly thirteen years ago, the Supreme Court “declared that the Second
3 Amendment is not a second-class right, subject to an entirely different body of rules
4 than the other Bill of Rights guarantees.” *Silvester v. Becerra*, 138 S.Ct. 945, 952
5 (2018) (Thomas, J., dissenting from denial of cert.) (quoting *McDonald v. Chicago*,
6 561 U. S. 742, 780 (2010)) (cleaned up).

7 4. And just last year, in *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S.Ct.
8 2111 (2022) (“*Bruen*”), the Supreme Court confirmed that the “test that [it] set forth
9 in *Heller*” was the only appropriate mode of analyzing Second Amendment
10 challenges, and “reiterate[d] that the standard for applying the Second Amendment is
11 as follows: When the Second Amendment’s plain text covers an individual’s conduct,
12 the Constitution presumptively protects that conduct. The government must then
13 justify its regulation by demonstrating that it is consistent with the Nation’s historical
14 tradition of firearm regulation. Only then may a court conclude that the individual’s
15 conduct falls outside the Second Amendment’s unqualified command.” *Bruen*, 142
16 S.Ct. at 2129–30 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10
17 (1961)) (cleaned up).

18 5. Plaintiffs wish to acquire firearms in common use for lawful purposes
19 that are not prohibited under any of California’s myriad regulations on the types and
20 categories of weapons that may be acquired and possessed by individuals in the State.
21 The conduct that Plaintiffs wish to engage in—acquiring firearms to keep and bear for
22 lawful purposes including immediate self-defense—is plainly covered by the text of
23 the Second Amendment.

24 6. As explained in *Bruen*, the government bears the burden of
25 “affirmatively prov[ing] that its firearm regulation is part of the historical tradition
26 that delimits the outer bounds of the right to keep and bear arms.” 142 S.Ct. at 2127.
27 Here, Defendants cannot possibly carry that burden. No waiting period or any
28 analogous laws existed in the constitutionally relevant period of history. Rather, no

1 form of a waiting period law was enacted for any jurisdiction until 1923, well beyond
2 the relevant time period the Supreme Court permits to be considered—after all, the
3 law held unconstitutional in *Bruen* was enacted in 1911.

4 7. Adding insult to injury, Defendants broadly discriminate against the
5 average person by allowing *nearly two dozen categories of favored individuals* to take
6 possession of firearms and ammunition *without* being subject to those same delays
7 and burdens. This case is thus also brought on the premise that Defendants’
8 enforcement of California law violates the Equal Protection Clause by discriminating
9 among its citizens in their exercise of the fundamental right to keep and bear arms.

10 8. Plaintiffs therefore bring this litigation to vindicate their rights on a
11 simple premise: The State may not prevent a law-abiding person from taking
12 possession of an arm after it confirms, using readily available electronic databases,
13 that the person is not prohibited from possessing firearms.

14 9. Put differently, if the Defendants query federal and state databases and
15 return no records showing that an applicant is prohibited from possessing arms, and
16 have no other evidence that they are disqualified from exercising their rights, they
17 must allow a dealer to transfer possession of the arm without further delay.³

18 10. Plaintiffs acknowledge that the relief they seek is contrary to *Silvester v.*
19 *Harris*, 843 F.3d 816 (9th Cir. 2016). But *Silvester* has been abrogated, as *Bruen*
20 expressly rejected the “two-step” approach used in *Silvester* to reject a similar
21 challenge to California’s Waiting Period laws.

22 11. California’s Waiting Period Laws, and Defendants’ enforcement of
23 them, are not analogous to any constitutionally relevant history and tradition of
24 regulating firearms. Thus, the Waiting Period Laws must be declared unconstitutional
25 and enjoined.

26
27 ³ Without conceding the constitutionality of such laws, Plaintiffs do not challenge in
28 this case the federal and state statutes that prohibit certain categories of persons from
acquiring firearms or the State’s “point of contact” background check requirement.

THE PARTIES

1
2 12. Plaintiff Claire Richards is a resident of San Diego County, California.
3 Richards is a law-abiding, responsible gun owner with a firearm registered in her name
4 in Defendants’ Automated Firearms System (“AFS”) and Dealer’s Record of Sale
5 (“DROS”) databases and is not prohibited under state or federal law from acquiring
6 or possessing firearms or ammunition. Richards holds an active license to carry a
7 concealed weapon (“CCW”) issued by the San Diego County Sheriff’s Department.
8 She is a member of Plaintiffs SDCGO, CGF, FPC, and SAF and a customer of the
9 Dealer Plaintiffs.

10 13. Plaintiff Alisha Curtin is a resident of San Diego County, California.
11 Curtin is a law-abiding, responsible gun owner with a firearm registered in her name
12 in Defendants’ AFS and DROS databases and is not prohibited under state or federal
13 law from acquiring or possessing firearms or ammunition. Curtin holds an active
14 CCW license issued by the San Diego County Sheriff’s Department, and also
15 possesses a valid certificate of eligibility (“COE”) issued by DOJ. She is a member of
16 Plaintiffs SDCGO, CGF, FPC, and SAF and a customer of the Dealer Plaintiffs.

17 14. Plaintiff Dakota Adelpia is a law-abiding, responsible gun owner with
18 a firearm registered in her name in Defendants’ AFS and DROS databases and is not
19 prohibited under state or federal law from acquiring or possessing firearms or
20 ammunition. Adelpia holds an active CCW license issued by the San Diego County
21 Sheriff’s Department, and also possesses a valid COE issued by DOJ. She is a member
22 of Plaintiffs SDCGO, CGF, FPC and SAF and a customer of the Dealer Plaintiffs.

23 15. Plaintiff Michael Schwartz is a law-abiding, responsible gun owner with
24 a firearm registered in his name in Defendants’ AFS and DROS databases and is not
25 prohibited under state or federal law from acquiring or possessing firearms or
26 ammunition. Schwartz holds an active CCW license issued by the San Diego County
27 Sheriff’s Department, and also possesses a valid COE issued by DOJ. He is a member
28 of Plaintiffs SDCGO, CGF, FPC and SAF and a customer of the Dealer Plaintiffs.

1 16. Plaintiffs Richards, Curtin, Adelpia, and Schwartz are hereinafter
2 collectively referred to as the “Individual Plaintiffs.”

3 17. Plaintiff North County Shooting Center, Inc. (“NCSC”) is a California
4 corporation, state and federally licensed firearms retailer, shooting range, and training
5 facility in the City of San Marcos, within San Diego County.

6 18. Plaintiff Darin Prince is a natural person, a citizen of the United States,
7 and a resident of San Diego County. Plaintiff Prince is a partner of Plaintiff NCSC, a
8 proprietor of the business, and the individual licensee associated with the dealership
9 and range facility, including by and through the Defendants and their Bureau of
10 Firearms.

11 19. Plaintiff PWGG, L.P. (“PWG”) is a California limited partnership, doing
12 business as “Poway Weapons & Gear” and “PWG Range,” and a state and federally
13 licensed firearms retailer, shooting range, and training facility in the city of Poway,
14 California, within San Diego County.

15 20. Plaintiff John Phillips is a natural person, a citizen of the United States,
16 and a resident of San Diego County. Plaintiff Phillips is a partner of PWG, a proprietor
17 of the business, and the individual licensee associated with the dealership and range
18 facility, including by and through the Defendants and their Bureau of Firearms.
19 Plaintiff Phillips is also a trained firearms instructor.

20 21. Plaintiffs Prince, Phillips, NCSC, and PWG are hereinafter collectively
21 referred to as the “Dealer Plaintiffs.” The Dealer Plaintiffs bring this action on behalf
22 of their customers and would-be customers. *See Craig v. Boren*, 429 U.S. 190, 192–
23 97 (1976).

24 22. Plaintiff San Diego County Gun Owners PAC (“SDCGO”) is a political
25 organization based in San Diego County, whose purpose is to protect and advance the
26 Second Amendment rights of residents of San Diego County, through their efforts to
27 support and elect local and state representatives who support the Second Amendment
28 right to keep and bear arms, education, and advocacy on Second Amendment issues.

1 SDCGO's membership and donors consist of Second Amendment supporters, people
2 who own guns for self-defense and sport, firearms dealers, shooting ranges, and
3 elected officials who want to restore and protect the right to keep and bear arms in
4 California. SDCGO's members are comprised of licensed firearm dealers as well as
5 individuals who are not prohibited under state or federal law from possessing,
6 receiving, owning, or purchasing a firearm or ammunition. SDCGO brings this action
7 on behalf of its members and similarly situated members of the public.

8 23. Plaintiff California Gun Rights Foundation ("CGF") is a nonprofit
9 foundation incorporated under the laws of California with a place of business in
10 Sacramento, California. CGF serves its members, supporters, and the public through
11 educational, cultural, and judicial efforts to defend and advance Second Amendment
12 and related rights. CGF has thousands of members in California, including in San
13 Diego County. CGF's members include individuals who are not prohibited under state
14 or federal law from possessing, receiving, owning, or purchasing a firearm or
15 ammunition, as well as licensed firearm dealers. CGF brings this action on behalf of
16 its members and similarly situated members of the public.

17 24. Plaintiff Firearms Policy Coalition, Inc. ("FPC") is a nonprofit
18 organization incorporated under the laws of Delaware with a place of business in Clark
19 County, Nevada. The purposes of FPC include defending and promoting the People's
20 rights (especially but not limited to First and Second Amendment protected rights),
21 advancing individual liberty, and restoring freedom. FPC serves its members and the
22 public through legislative advocacy, grassroots advocacy, litigation and legal efforts,
23 research, education, outreach, and other programs. FPC has members in the State of
24 California, including in San Diego County. FPC's members and supporters include
25 gun owners, individuals who wish to acquire firearms and ammunition, licensed
26 California firearm retailers, shooting ranges, trainers and educators, and others. FPC
27 brings this action on behalf of its members and similarly situated members of the
28 public.

1 25. Plaintiff Second Amendment Foundation (“SAF”) is a non-profit
2 educational foundation incorporated under the laws of Washington with its principal
3 place of business in Bellevue, Washington. SAF seeks to preserve the effectiveness
4 of the Second Amendment through educational and legal action programs. SAF has
5 over 720,000 members and supporters nationwide, including thousands of members
6 in California. The purposes of SAF include education, research, publishing, and legal
7 action focusing on the constitutional right to privately own and possess firearms under
8 the Second Amendment, and the consequences of gun control. SAF’s members and
9 supporters include gun owners, individuals who wish to acquire firearms and
10 ammunition, licensed California firearm retailers, shooting ranges, trainers and
11 educators, and others. SAF brings this action on behalf of its members and similarly
12 situated members of the public.

13 26. Plaintiffs SDCGO, CGF, FPC, and SAF are hereinafter referred to as the
14 “Institutional Plaintiffs.” The Institutional Plaintiffs’ members include individuals in
15 California that, like Individual Plaintiffs, hold a COE, a CCW, and/or are otherwise
16 known by the Defendants to have a firearm and be legally eligible to possess and
17 acquire firearms. The Institutional Plaintiffs’ members also include individuals in
18 California who have not yet acquired a firearm but intend to purchase one.

19 27. Defendant Rob Bonta is the Attorney General of the State of California.
20 Under Article 5, § 13 of the California Constitution, Attorney General Bonta is the
21 “chief law officer of the State,” with a duty “to see that the laws of the state are
22 uniformly and adequately enforced.” Defendant Bonta is the head of the California
23 Department of Justice. DOJ’s Division of Law Enforcement’s Bureau of Firearms is
24 charged with regulation and enforcement actions regarding the manufacture, sale,
25 ownership, safety training, and transfer of firearms and ammunition. The DOJ and its
26 Bureau of Firearms regulate and enforce state law related to the sales, transfer,
27 possession, and ownership of firearms. The Attorney General and DOJ maintain an
28 office in San Diego, California. Defendant Bonta is sued in his official capacity.

1 34. In processing these transactions, firearms dealers licensed by Defendants
2 must use Defendants’ Dealer’s Record of Sale (DROS) DROS Entry System (DES)
3 (“DROS DES”). DES can be accessed at <https://des.doj.ca.gov>. The DROS system is
4 the computerized, point-of-sale application system firearms dealers use to submit
5 applications to acquire firearms to the Defendants’ Bureau of Firearms.

6 35. California law provides that “[n]o firearm shall be delivered . . . [w]ithin
7 10 days of the application to purchase, or, after notice by the department pursuant to
8 Section 28220, within 10 days of the submission to the department of any correction
9 to the application, or within 10 days of the submission to the department of any fee
10 required pursuant to Section 28225, whichever is later.” Cal. Penal Code § 26815(a).

11 36. California law further provides that “[a] dealer . . . shall not deliver a
12 firearm to a person . . . [w]ithin 10 days of the application to purchase, or, after notice
13 by the department pursuant to Section 28220, within 10 days of the submission to the
14 department of any correction to the application, or within 10 days of the submission
15 to the department of any fee required pursuant to Section 28225, whichever is later.”
16 Cal. Penal Code § 27540(a).

17 37. Violation of these restrictions subjects the violator to criminal sanction.
18 *See* Cal. Penal Code § 19.4 (“When an act or omission is declared by a statute to be
19 a public offense and no penalty for the offense is prescribed in any statute, the act or
20 omission is punishable as a misdemeanor.”). Further, a license to transact in firearms
21 “is subject to forfeiture for a breach of any of the prohibitions and requirements of
22 [Article 2, Penal Code §§ 26800 – 26915]” (with some exceptions not applicable
23 here). Cal. Penal Code § 26800.

24 38. DOJ has access to and uses multiple state and federal electronic databases
25 to investigate an acquirers’ eligibility to own a firearm.

26 39. Since 1995, California law has required that the background check
27 consist of automated analyses of multiple law enforcement databases that are
28 continually updated. *See* Cal. Penal Code § 28220(a) (directing DOJ to “examine its

1 records” “to determine” whether purchaser is prohibited).⁴ Any individual who wants
2 to purchase a firearm and does not fall into one of the WPL’s 18 exemptions must
3 pass the background check to show that they do not fall into one of the prohibited
4 classes.

5 40. California law prohibits several classes of people from owning a firearm.
6 Examples of such “prohibited persons” include individuals convicted of a felony,
7 misdemeanor crime of domestic violence, or other violent crime. Cal. Penal Code §§
8 29800, 29805, 29905. State law likewise restricts the mentally ill from possessing
9 firearms. Cal. Welf. & Inst. Code §§ 8100–8108.

10 41. Under Section 28220(f), DOJ has authority to delay a firearm transaction
11 beyond the 10-day waiting period *only* in three limited and expressly enumerated
12 circumstances where its background check reveals potentially disqualifying
13 information and DOJ is “unable to ascertain” whether the purchaser is actually
14 prohibited or ineligible before the waiting period concludes. If DOJ is “unable to
15 ascertain the final disposition of the arrest or criminal charge, or the outcome of the
16 mental health treatment or evaluation, or the purchaser’s eligibility to purchase a
17 firearm” within 30 days from the date of purchase, it must “immediately notify” the
18 dealer that it can transfer the firearm. Cal. Penal Code § 28220(f)(4).

19
20
21 ⁴ See *Silvester v. Harris*, 41 F.Supp.3d 927, 947–52 (E.D. Cal. 2014) (summarizing
22 the background check’s various database searches). At least two additional safeguards
23 work to prevent prohibited persons from possessing firearms. First is the Armed and
24 Prohibited Persons System (“APPS”), “a database that cross-references persons with
25 firearms records in the AFS, typically a DROS record, with those who have a
26 prohibiting conviction or circumstance.” *Silvester*, 41 F. Supp. 3d at 957, *see also* Cal.
27 Penal Code §§ 30000–30015. “The purpose behind APPS is to identify prohibited
28 persons who have firearms and to enable law enforcement to retrieve the firearms
before those persons can use the firearms to harm others or themselves.” *Silvester*, 41
F. Supp. 3d at 957. Second is DOJ’s “Rap Back” system, which “is a notification that
DOJ receives whenever someone with fingerprints on file with DOJ is the subject of
a criminal justice agency record, *e.g.* a notification of a subsequent arrest record.” *Id.*

1 42. But upwards of 99% of all DROS applications are approved by
2 Defendants. *Silvester*, 41 F. Supp. 3d at 953. In 2013, for example, DOJ processed
3 960,179 DROS applications, with only 7,371 denials. *Id.*⁵ And a large percentage of
4 approvals occur within a matter of minutes. *Id.* (finding that “approximately 20%” of
5 applications are “auto approved”).

6 43. Yet even after the DOJ’s systems confirm that a law-abiding firearm
7 acquirer is eligible to possess a firearm, the acquirer must wait—and dealers must
8 enforce and comply with—at least⁶ a full ten-days before the acquirer may take
9 possession of the gun. “If a background check is completed prior to 10 days, the
10 firearm is not released because state law mandates a 10-day waiting period.” *Id.* at
11 954.

12 44. But for Defendants’ enforcement of the Waiting Period Laws, licensed
13 firearm dealers could transfer possession of a firearm to acquirers immediately after
14 the Defendants electronically confirm that the acquirer is not prohibited using the
15 DROS DES “exempt” function. Thus, no modification to the Defendants’ DROS
16 systems would be required in order to comply with an injunction prohibiting
17 enforcement of the Waiting Period Laws as to non-prohibited individuals. Under
18 current law, however, dealers cannot release the gun until the DROS system releases
19 it—either because it affirmatively approved the transaction or the purchaser’s status
20 remains “undetermined” after 30 days under section 28220(f)(4).

21
22
23 _____
24 ⁵ On information and belief, many such denials are due to unconstitutional laws and
25 policies restricting firearm acquisition for several historically unsupported reasons,
26 meaning that the number of denials for constitutionally sound causes is smaller than
those prohibited under the Defendants’ laws and enforcement practices.

27 ⁶ *See, e.g.*, JUDGMENT GRANTING PETITION FOR WRIT OF MANDATE, *Campos v. Bonta*,
28 San Diego Super. Ct. Case No. 37-2020-0030178 (Aug. 8, 2022) (invalidating DOJ
practice of extending 10-day period).

1 ***Impact Of Defendants' Enforcement Of Waiting Period Laws On Plaintiffs***

2 45. **Individuals:** The Individual Plaintiffs have lawfully purchased a
3 firearm within the State of California or can otherwise demonstrate proof of
4 ownership and lawful possession of their firearms. They would like to exercise their
5 right to acquire and take possession of firearms from a licensed dealer after submitting
6 the transaction through the Defendants' systems which, among other things, facilitate
7 a background check and record the items transferred, and would immediately do so as
8 soon as Defendants' systems confirm their status as eligible to possess firearms but
9 for Defendants' laws, policies, and enforcement practices that prevent them from
10 taking possession of firearms until Defendants allow a transfer to occur. Defendants'
11 enforcement of the Waiting Period Laws against the Individual Plaintiffs violates their
12 right to keep and bear arms, and the rights of others similarly situated to them.

13 46. The Waiting Period Laws infringe the Second Amendment rights of
14 Plaintiffs and all other similarly situated Californians: They prevent the delivery of a
15 firearm for a full ten-day period even where California's firearms databases confirm
16 that the purchaser already owns a firearm and the purchaser has passed a background
17 check before the end of the ten-day period.

18 47. **Institutional Plaintiffs:** The Individual Plaintiffs are each members of
19 the Institutional Plaintiffs, whose membership includes many more individuals who
20 are similarly situated in that they have a CCW, COE, or at least one firearm in
21 California's AFS system. The Institutional Plaintiffs' members likewise include
22 would-be first-time purchasers who are not prohibited from purchasing firearms.
23 Accordingly, the Institutional Plaintiffs and their members are harmed by the Waiting
24 Period Laws.

25 48. **Dealer Plaintiffs:** Plaintiffs PWG and NCSC are duly licensed firearm
26 retailers and shooting ranges listed in the DOJ's Centralized List of Firearms Dealers.
27 Plaintiffs PWG and NCSC have received numerous firearms and ammunition
28 purchase applications from purchasers who are not prohibited under state or federal

1 law from possessing, receiving, owning, or purchasing a firearm or ammunition; such
2 applications have been duly submitted to Defendants. The information presented on
3 those applications is accurate, legible, and complete. Defendants’ laws, policies, and
4 enforcement practices prevent Plaintiffs PWG and NCSC and their staff from
5 immediately transferring firearms or ammunition to transferees that are legally
6 eligible to possess and receive such constitutionally protected arms. Defendants’
7 enforcement of the Waiting Period Laws has caused, and is causing, injury and harm
8 to Plaintiffs PWG and NCSC (and their customers) through, for example, delayed
9 and/or cancelled sales, delayed and/or cancelled revenues, lost goodwill with
10 purchasers, and allocation of employee time and effort to continuously check
11 purchasers’ firearm statuses, and update/notify purchasers of their pick-up times of
12 lawfully purchased property.

13 *The Right To Keep and Bear Arms*

14 49. The Second Amendment “guarantee[s] the individual right to possess
15 and carry weapons in case of confrontation.” *District of Columbia v. Heller*, 554 U.S.
16 570, 592 (2008). And it “elevates above all other interests”—including the
17 Defendants’—“the right of law-abiding, responsible citizens to use arms in defense of
18 hearth and home.” *Id.* at 635. The Second Amendment is fully applicable to the States
19 through the Fourteenth Amendment. *McDonald v. City of Chicago*, 561 U.S. 742
20 (2010).

21 50. The fundamental, individual right to keep and bear arms includes the
22 right of individuals to acquire and take possession of firearms and ammunition for all
23 lawful purposes.

24 51. California, however, has placed unconstitutional and burdensome
25 restrictions on access to and delivery of firearms, generally subjecting firearm
26 acquirers (and dealers) to a minimum ten-day ban on the delivery of firearms, even if
27 the individual is already known by the Defendants to be in possession of a firearm and
28 not prohibited from possessing firearms.

1 52. When, as here, “the Second Amendment’s plain text covers an
2 individual’s conduct, the Constitution presumptively protects that conduct. The
3 government must then justify its regulation by demonstrating that it is consistent with
4 the Nation’s historical tradition of firearm regulation. Only then may a court conclude
5 that the individual’s conduct falls outside the Second Amendment’s unqualified
6 command.” *Bruen*, 142 S.Ct. at 2129–30 (quoting *Konigsberg*, 366 U. S. at 50 n.10)
7 (cleaned up). The government bears the burden of identifying an historical analogue
8 to “affirmatively prove that its firearm regulation is part of the historical tradition that
9 delimits the outer bounds of the right to keep and bear arms.” *Id.* at 2127.

10 53. *Bruen* explained that the inquiry, cabined to the constitutionally relevant
11 history, must show “how and why the [purportedly analogous] regulations burden a
12 law-abiding citizen’s right to armed self-defense.” *Id.* at 2133. “In some cases,” such
13 as this one, “that inquiry will be fairly straightforward. For instance, when a
14 challenged regulation addresses a general societal problem that has persisted since the
15 18th century, the lack of a distinctly similar historical regulation addressing that
16 problem is relevant evidence that the challenged regulation is inconsistent with the
17 Second Amendment.” *Id.* at 2131.

18 54. California’s purported justifications for its Waiting Period Laws—“to
19 allow sufficient time for law enforcement to complete a background check, and also
20 to provide a ‘cooling off’ period (*i.e.*, a period in which weapons purchasers may
21 reconsider, particularly when an impulsive act of violence or self harm may be
22 contemplated),” *Silvester*, 843 F.3d at 823—seek to address general societal problems
23 that have persisted since the 18th century. And California cannot carry its burden in
24 any event, as no government (federal, state, or local) in the Nation imposed waiting
25 periods on the purchase of firearms on *any* firearms acquirers—first-time or
26 otherwise—in the constitutionally relevant period.

27 55. California did not first impose a waiting period until 1923, when it joined
28 a few other states in doing so. 1923 Cal. Stat. ch. 339 §§ 10-11. But legislation enacted

1 132 years after the Founding is irrelevant to determining the scope of the Second
2 Amendment. Indeed, the Supreme Court in *Bruen* refused to even “address any of the
3 20th-century historical evidence” offered by New York and its *amici*, since it “does
4 not provide insight into the meaning of the Second Amendment when it contradicts
5 earlier evidence.” 142 S.Ct. at 2154 n.28.

6 56. Failing *Bruen*’s historical test from the outset, California’s Waiting
7 Period Laws must be declared unconstitutional and enjoined.

8 ***California Law Exempts Several Favored Classes From The Waiting Period***

9 57. At the same time California law imposes unconstitutional and
10 unnecessary restraints on the Second Amendment rights of ordinary law-abiding
11 Californians, it carves out numerous exceptions to their waiting period laws for certain
12 favored classes. To name just a few, destructive device collectors, movie prop houses,
13 auction purchasers, and consultants-evaluators are all granted instant access to the
14 firearms and ammunition they seek, while Plaintiffs and the law-abiding general
15 public are sidelined with delays and burdens. Cal. Penal Code §§ 26950, *et seq.*;
16 27650, *et seq.*

17 58. California Penal Code § 26950 also creates what is routinely referred to
18 as “the Hollywood exception”—specifically, an “entertainment firearms permit,”
19 which “authorizes the permitholder to possess firearms loaned to the permitholder for
20 use solely as a prop in a motion picture, television, video, theatrical, or other
21 entertainment production or event.” The holder of an entertainment firearms permit is
22 not subject to the 10-day waiting period, among other regulations.

23 59. Plaintiffs thus challenge the following exemptions for violating the
24 Fourteenth Amendment’s Equal Protection Clause:

- 25 a. Certain law enforcement transactions (Cal. Penal Code §§ 26950, 27050,
26 27055, 27060, 27065 (exempting § 26815); §§ 27600, 27605, 27610,
27 27615, and 27650 (exempting § 27540));

1 bear arms for all lawful purposes, including for the purpose of immediate self-defense.
2 *Heller*, 554 U.S. at 635.

3 62. “When the Second Amendment’s plain text covers an individual’s
4 conduct, the Constitution presumptively protects that conduct. The government must
5 then justify its regulation by demonstrating that it is consistent with the Nation’s
6 historical tradition of firearm regulation. Only then may a court conclude that the
7 individual’s conduct falls outside the Second Amendment’s unqualified command.”
8 *Bruen*, 142 S.Ct. at 2129–30 (quoting *Konigsberg*, 366 U. S. at 50 n.10) (cleaned up).

9 63. The conduct that Individual Plaintiffs, Institutional Plaintiffs’ members,
10 Dealer Plaintiffs’ customers and would-be customers, and similarly situated members
11 of the public wish to engage in—acquiring arms to keep and bear for lawful purposes
12 including but not limited to immediate self-defense—is covered by the Second
13 Amendment’s plain text.

14 64. California Penal Code sections 26815 and 27540, and Defendants’
15 regulations, policies, and enforcement practices applying their Waiting Period Laws,
16 impose at least a ten-day ban, as well as other burdens and costs, on the possession of
17 constitutionally protected arms by a legally eligible individual under pain of criminal
18 and other penalties.

19 65. Defendants’ Waiting Period Laws individually and collectively prevent,
20 substantially interfere with, inhibit access to, and infringe upon Plaintiffs’ right (and
21 the rights of Institutional Plaintiffs’ members) to keep and bear arms for lawful
22 purposes.

23 66. Dealer Plaintiffs NCSC and PWG have a corresponding interest in
24 defending and promoting the rights of the dealerships’ patrons and would-be patrons
25 on their behalf. Dealer Plaintiffs are subject to Defendants’ laws, policies, and
26 enforcement practices, which include serious civil and criminal penalties, as well as
27 the loss of their dealership, for violations thereof.

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1 67. Under *Bruen*, Defendants must affirmatively prove that their firearms
2 regulations challenged herein are “part of the historical tradition that delimits the outer
3 bounds of the right to keep and bear arms.” 142 S.Ct. at 2127. But this they cannot do
4 because no analogous waiting period laws existed in the constitutionally relevant
5 period. Rather, waiting periods did not appear for any jurisdiction until 1923.

6 68. Because Defendants’ Waiting Period Laws, regulations, and
7 enforcement practices violate the right to keep and bear arms, they must therefore be
8 declared unconstitutional and enjoined.

9 69. Individual Plaintiffs desire and intend to apply for the transfer of a
10 firearm and to take possession of it as soon as they can be electronically confirmed to
11 not be prohibited from possessing firearms, and would do so, but for the Defendants’
12 enforcement of the Waiting Period Laws and the risk of criminal and other penalties.

13 70. Institutional Plaintiffs’ law-abiding members in California desire and
14 intend to apply for the transfer of a firearm and to take possession of it as soon as they
15 can be electronically confirmed to not be prohibited from possessing firearms, and
16 would do so, but for the Defendants’ enforcement of the Waiting Period Laws and the
17 risk of criminal and other penalties.


18 71. Dealer Plaintiffs’ law-abiding customers and would-be customers in
19 California desire and intend to apply for the transfer of a firearm and to take possession
20 of it as soon as they can be electronically confirmed to not be prohibited from
21 possessing firearms, and would do so, but for the Defendants’ enforcement of the
22 Waiting Period Laws and the risk of criminal and other penalties.

23 72. 42 U.S.C. § 1983 creates a cause of action against state actors who
24 deprive individuals of federal constitutional rights under color of state law. Individual
25 Plaintiffs, Institutional Plaintiffs’ members, and Dealer Plaintiffs’ customers and
26 would-be customers have suffered—and continue to suffer—from an unlawful and
27 irreparable deprivation of their fundamental, constitutionally protected right to keep
28 and bear arms.

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By 

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