

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 23-cv-02563-JLK

ROCKY MOUNTAIN GUN OWNERS, and
ALICIA GARCIA,

Plaintiffs,
v.

JARED S. POLIS, in his official capacity as Governor for the State of Colorado,

Defendant.

AGENDA FOR ORAL ARGUMENTS

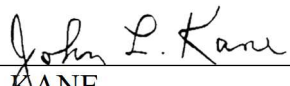
Kane, J.

On August 24, 2026, I will hear oral arguments regarding the Cross-Motions for Summary Judgment filed by the parties (ECF Nos. 62 and 63). The parties are directed to address at least the following questions during their arguments.

- It is my duty as a federal judge to follow controlling precedent and I am committed to doing so. I am familiar with the relevant and binding Supreme Court decisions, including *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022); and *United States v. Rahimi*, 602 U.S. 680 (2024). I am also familiar with relevant Tenth Circuit opinions, including *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96 (10th Cir. 2024), and *Ortega v. Lujan Grisham*, 148 F.4th 1134 (10th Cir. 2025). Are there additional cases or authorities that are not cited in the parties’ briefs that are binding or instructive?
- I have reviewed the supplemental briefs filed by the parties concerning *Ortega*. I note that Judge Federico, joined by Judge Mortiz, observed in dissent from the denial of hearing en-banc that “[i]t is an open question whether *Ortega* casts doubt on the constitutionality. . .” of “Colorado[’s]. . .three-day waiting period for gun purchases.” *Ortega v. Grisham*, 162 F.4th 1056, 1061 (10th Cir. 2025) (Federico, dissenting) (denying en-banc review). Judge Federico further maintained that “[*Rocky Mountain Gun Owners*] remains the law of the circuit.” *Id.* at 1063. Similarly, in his dissent in *Ortega*, Judge Matheson noted that *RMGO*’s holding “is the law of this Circuit.” *Ortega*, 148 F.4th at 1159. The parties should therefore address the application of *RMGO* and *Ortega*.

- In *Bruen*, the Supreme Court instructed that “Courts are [] entitled to decide a case based on the historical record compiled by the parties.” *Bruen*, 142 S. Ct. at 2130 n.6. I previously expressed my concern that such an independent analysis could lead to inconsistent holdings, as the parties could craft distinct records and present varying arguments in different cases. *See Rocky Mountain Gun Owners v. Polis*, 701 F. Supp. 3d 1121, 1138 n.13 (D. Colo. 2023). Nevertheless, *Bruen* makes clear that I must “decide a case based on the historical record” presented by the parties and *Ortega* highlighted the significance of arguments that have not previously been considered, *Ortega* 148 F.4th at 1148, it is my duty to consider the full record in front of me. Accordingly, the parties should address any similarities or differences between the record in *Ortega* and the record presented in this case, including factual and statutory similarities or distinctions and any historical evidence or arguments that were or were not considered in *Ortega*.
- In *Ortega*, the Tenth Circuit stated that “[c]ommon sense dictates that the right to bear arms requires a right to acquire arms...”. *Ortega*, 148 F.4th at 1143. The parties should be prepared to discuss whether the scope of the right must first be determined through a historical analysis of the term “acquire,” consistent with the Supreme Court’s approach to the Second Amendment in *Heller* and *Bruen*. If so, the parties should present evidence and argument identifying the historical understanding of “acquire” and whether that meaning encompasses the conduct here.
- Keeping *Ortega* in mind, parties should also be prepared to argue and present evidence as to whether Colorado’s Waiting Period Law, Colo. Rev. Stat. § 18-12-115, imposes a condition or qualification on the sale of arms.

DATED this 19th day of August, 2026.



JOHN L. KANE
SENIOR U.S. DISTRICT JUDGE