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March 5, 2008

BULLETIN TO ALL CALIFORNIA DISTRICT ATTORNEYS

Re: Writs of Coram Nobis

The California Department of Justice (DOJ) through the Bureau of Firearms reviews the background of individuals who apply to purchase firearms in order to determine whether they have suffered any prior convictions that would preclude them from lawfully possessing a firearm. Recently the Bureau has encountered a number of cases in which individuals have misused a petition for writ of coram nobis to obtain relief from prior convictions that would otherwise disqualify them from purchasing and possessing a firearm. The purpose of this bulletin is to alert you to the problem and to request your assistance when such petitions are filed in your jurisdiction.

Federal law provides in part that a federal firearm license may not be issued to any person who has been convicted of a misdemeanor crime involving domestic violence unless the conviction has been expunged or set aside. (18 U.S.C. § 922(g)(9); 18 U.S.C. § 921(a)(33)(B)(ii).) Although California Penal Code section 1203.4 allows a defendant to seek dismissal of the charges under specified circumstances, it specifically provides that such dismissal does not permit the person to own any firearm, nor does it prevent charging the conviction as a prior offense under section 12021. (§ 1203.4(a).) Accordingly, federal courts have held that a dismissal order pursuant to section 1203.4 does not constitute an expungement within the meaning of the firearm licensing statutes. (*Jennings v. Mukasey* (9th Cir. 2007) 511 F.3d 894.) DOJ will not approve the applications of such persons to purchase a firearm.

Given the limits of a dismissal under section 1203.4 some persons with misdemeanor domestic violence convictions have filed a petition for writ of coram nobis, which permits relief from a criminal conviction when fraud, coercion, or excusable mistake deprived the defendant of a fair trial and no other statutory remedy is available. The function of the writ is to correct errors of fact, not errors of law. A writ of coram nobis granted for a mistake of law is erroneous and can be reversed on appeal if a timely notice is filed. (*People v. Ibanez* (1999) 76 Cal.App.4th 537, 549.) Once granted and final, however, the writ could effectively eliminate the conviction and any restriction on the defendant's ability to purchase and possess firearms.

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In order to avoid the consequences to state law enforcement and firearm limitations, we ask that you carefully review any applications for coram nobis relief filed in your trial courts and to oppose the petition if the applicable standards are not met. We also ask that you notify DOJ as soon as possible if a petition is granted so we can determine whether an appeal is appropriate. Any questions or requests for assistance should be directed to:

Alison Merrilees  
Deputy Attorney General  
Bureau of Firearms  
(916) 263-6275

Sincerely,

A handwritten signature in black ink, appearing to read "Dane R. Gillette", written over a horizontal line.

DANE R. GILLETTE  
Chief Assistant Attorney General

For EDMUND G. BROWN JR.  
Attorney General