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E-FILED
3/27/2018 8:08 PM
FRESNO COUNTY SUPERIOR COURT
By: K. Daves, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO

DANNY VILLANUEVA, NIALL
STALLARD, RUBEN BARRIOS,
CHARLIE COX, MARK STROH,
ANTHONY MENDOZA, and
CALIFORNIA RIFLE & PISTOL
ASSOCIATION, INCORPORATED

Petitioners,

v.

XAVIER BECERRA, in his official capacity
as Attorney General for the State of
California, STEPHEN LINDLEY, in his
official capacity as Chief of the California
Department of Justice, Bureau of Firearms;
CALIFORNIA DEPARTMENT OF
JUSTICE, and DOES 1-10,

Respondents.

Case No.: 17CECG03093

[Assigned for All Purposes to the Honorable
Judge Mark Snauffer; Dept.: 501]

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS-PETITIONERS' MOTION
FOR ISSUANCE OF WRIT OF MANDATE
AND JUDICIAL DECLARATION**

Hearing Date: April 19, 2018
Hearing Time: 3:30 p.m.
Judge: Mark Snauffer
Dept.: 501

Action Filed: September 7, 2017
Trial Date: November 26, 2018

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INTRODUCTION

California recently enacted statutes amending the definition of “assault weapon” thereby bringing various firearms within that term’s scope that had previously not been. Those new laws require owners of a qualifying firearm who wish to continue to possess it to register it with the California Department of Justice (“DOJ”) by July 1, 2018. The laws also tasked DOJ with making regulations to implement the registration process and exempted DOJ from the Administrative Procedure Act (“APA”)’s otherwise mandatory procedures for adopting regulations in doing so.

DOJ has erroneously interpreted that very narrow exemption to the APA as an invitation to bypass the formal rulemaking process in adopting a slew of regulations that have tenuous, if any, connections to the “assault weapon” registration process. Because these regulations were not adopted lawfully, they are invalid and Petitioners seek to enjoin their enforcement before the fast approaching registration window closes forever and Petitioners are forced to comply with illegal regulations to simply maintain lawful possession of their property. To be clear, Petitioners do not dispute that DOJ is exempt from the APA in making regulations concerning “assault weapon” registration procedures. In fact, Petitioners do not challenge many of the regulations DOJ adopted that do just that. Rather, they contend that many of the regulations DOJ adopted without adhering to the APA either do not qualify for the APA exemption the legislature conferred on DOJ to implement the “assault weapon” registration scheme, even if they are APA exempt, are nevertheless void because they unlawfully expand or restrict the scope of a statute.

STATEMENT OF FACTS

The Assault Weapon Control Act (“AWCA”) restricts firearms it defines as “assault weapons,” including generally prohibiting their possession, unless registered. (See Penal Code, §§ 30510-30515, 30600-30680.) The class of firearms defined as “assault weapons” has changed multiple times since the AWCA was first enacted in 1989.¹ Most recently, on July 1, 2016, Governor Brown signed into law Senate Bill 880 (“SB 880”) and Assembly Bill 1135 (“AB 1135”). (Sen. Bill. No. 880 (2015-2016 Reg. Sess.); Ass. Bill. No. 1135 (2015-2016 Reg. Sess.).)

¹ For a thorough description of the definitional changes, see Petition at pages 10-17.

1 These bills are identical and amended the definition of “assault weapon” under Penal Code
2 section 30515. *Id.* Before the amendment, a semiautomatic, centerfire rifle with certain features
3 had to have a “detachable magazine” to be considered an “assault weapon.” Now, such a rifle is
4 an “assault weapon” as long as it “does not have a fixed magazine” (Pen. Code, § 30515, subd.
5 (a)(1).) They made the same definitional change for semiautomatic pistols with certain features.
6 (Pen. Code, § 30515, subd. (a)(4).) These changes targeted certain rifles and handguns with
7 “bullet button” magazine releases that avoided the “detachable magazine” definition.² But both
8 SB 880 and AB 1135 left the definitions for various shotguns deemed “assault weapons”
9 untouched. *See* (Pen. Code, § 30515, subds. (a)(6)-(8).)

10 SB 880 and AB 1135 also added “Subdivision (b)” to Penal Code § 30900. It requires that
11 any person who lawfully possesses a newly classified “assault weapon” register it before July 1,
12 2018, “pursuant to those *procedures* that the [DOJ] may establish by regulation . . .” (Pen. Code
13 § 30900, subd. (b)(1) (emphasis added).) Subdivision (b) further requires online registrations to
14 be submitted via the internet, that they contain a “description” of the firearm and information
15 regarding from whom the firearm was acquired, and “the registrant’s full name, address,
16 telephone number, date of birth, sex, height, weight, eye color, hair color, and California driver’s
17 license or identification card number.” (Pen. Code §§ 30900, subd. (b)(2-3).) It also allows DOJ
18 to charge a fee for the registration. (Pen. Code, § 30900, subd. (b)(4).) No other requirements or
19 restrictions for registration of newly classified “assault weapons” are mentioned in Subdivision
20 (b).

21 DOJ is exempt from the APA in “adopt[ing] regulations for the purpose of implementing
22 this [S]ubdivision [(b)].” (Pen. Code, § 30900, subd. (b)(5).) On December 30, 2016, DOJ first
23 submitted a package of proposed regulations purporting to implement Subdivision (b) to the
24 Office of Administrative Law (“OAL”) as “File and Print”—meaning exempt from the APA.
25 (Verified Petition for Writ of Mandate and Complaint (“Petition”) ¶¶ 47-48.) That proposed
26 package included a number of provisions that clearly qualify for Subdivision (b)’s APA
27

28 ² For a thorough explanation of the “bullet button” see Petition at page 14.

1 exemption—which provisions Petitioners do not challenge.

2 A number of its provisions, however, do not share that connection to Subdivision (b)’s
3 provisions, which are, again, limited to registration procedures. (See Penal Code, § 30900, subds.
4 (b)(1)-(4).) These provisions include: **Cal. Code Regs, tit. 11, § 5469** (repealing and replacing
5 existing regulations defining terms for “assault weapons” under Penal Code section 30515, which
6 were lawfully adopted pursuant to APA rulemaking requirements) (See Petition ¶ 74); **Cal. Code**
7 **Regs, tit. 11, § 5470, subd. (d)** (requiring “bullet button” shotguns to be registered under
8 Subdivision (b), despite not falling under any definition of “assault weapon”) (See Penal Code, §
9 30515, subds. (a)(6)-(7)); **Cal. Code Regs, tit. 11, § 5471** (creating over 40 new definitions for
10 terms—the majority of which are not related to the terms amended to create the new “assault
11 weapon” definition under AB 1135 or SB 880, and several of which expand the scope of the
12 AWCA, including its subdivisions (a) and (pp), which define terms relating to magazine systems
13 that cause certain shotguns to be required to be registered, despite not being “assault weapons”—
14 and subdivisions (d) and (x)—defining terms relating to “barrel length” and “overall length” that
15 do not even apply to “assault weapons” affected by AB 1135 and SB 880; **Cal. Code Regs, tit.**
16 **11, §§ 5472, subds. (f)-(g); 5474.2** (requiring that firearms lacking a manufacturer’s serial
17 number have a DOJ-approved serial number inscribed on them as a condition of registration);
18 **Cal. Code Regs, tit. 11, § 5473, subd. (b)(1)** (requiring that registrants agree to hold DOJ
19 harmless “for any indirect, incidental, special, or consequential damages” suffered as a result of
20 registering a firearm); **Cal. Code Regs, tit. 11, §§ 5474, subds (a) & (c); 5478, subd. (a)(2)**
21 (requiring registrants to provide U.S. citizenship status, place of birth, country of citizenship,
22 alien registration number or I-94, and “clear digital photographs” of the firearms to be registered,
23 what is called for by statute); **Cal. Code Regs, tit. 11, § 5474.1, subds (b)-(c)** (restricting the
24 statutory definition of the term “family members” who qualify for joint-registration under Penal
25 Code section 30955 and requiring documentation from a joint registrant to prove a common
26 address); and **Cal. Code Regs, tit. 11, § 5477** (prohibiting removal of the “release mechanism for
27 an ammunition feeding device on an assault weapon pursuant to Penal Code section 30900(b)(1) .
28 . . after the assault weapon is registered.”)

Only after DOJ voluntarily withdrew this regulatory package from OAL’s consideration and OAL rejected it upon resubmission, did OAL ultimately approve DOJ’s third “File and Print” submission of this package on July 21, 2017. (Petition ¶¶ 61-65.)³ That final, officially-adopted regulation package was essentially identical to DOJ’s original proposal, with the only substantive change being the extension of the registration deadline from January 1, 2018, to July 1, 2018, and a clarification that DOJ considered its proposed definitions for terms in Cal. Code Regs, tit. 11, § 5471, to only apply for the purposes of registration and not for defining “assault weapons” generally under Penal Code section 30515. Each of the above described regulations (the “Challenged Regulations”) remained in the finally adopted package.

Petitioners are individuals who either own firearms deemed “assault weapons” under SB 880 and AB 1135 and wish to register them, but do not wish to be forced to comply with the Challenged Regulations in doing so, or who own “bullet button” shotguns that are not “assault weapons” and thus should not have to register them as DOJ is requiring, (Petition ¶¶ 3-6), and an organization representing countless members in the same situations. (Petition ¶¶ 6-7.)

ARGUMENT

The APA prohibits an agency from enforcing any regulation not adopted in compliance with APA mandates, unless the legislature specifically exempts the agency from having to do so. (*Winzler & Kelly v. Dept. of Indus. Relations* (1981) 121 Cal.App.3d 120, 126-127.) Any such exemption must be expressly provided for in statute. Gov. Code § 11346. It is established that “any doubt as to the applicability of the APA’s requirements should be resolved in favor of the APA.” (*California Sch. Bd.s Ass’n v. State Bd. Of Educ.* (2010) 186 Cal.App.4th 1298, 1328; *Morales v. California Dept. Corrections and Rehabilitation* (2008) 168 Cal.App.4th 729, 736; *see also United Sys. of Ark. v. Stamhon* (1998) 63 Cal.App.4th 1001, 1010 [“When the Legislature has intended to exempt regulations from the APA, it has done so by clear, unequivocal language.”].) Even where an agency enjoys such an exemption, it still has “only as much

³ Counsel for Petitioner CRPA also submitted letters to DOJ and OAL with each submission of the regulatory package explaining why the challenged Regulations are invalid. Petition ¶¶ 52, 59.

rulemaking power as is invested” to it “by statute.” (*Carmel Valley Fire Protection Dist. v. State of California* (2001) 25 Cal.4th 287, 299.) And, regardless of whether adopted in compliance with APA procedures or through an exemption to the APA, “no regulation adopted is valid or effective unless consistent and not in conflict with existing statute.” *Agnew v. State Bd. Of Equalization* (1999) 21 Cal.4th 310, 321. This is because “an agency does not have discretion to promulgate regulations that are inconsistent with the governing statute, alter or amend the statute, or enlarge its scope.” (*Slocum v. State Bd. of Equalization* (2005) 134 Cal.App.4th 969, 974.) “If the court concludes that the administrative action transgresses the agency's statutory authority, it need not proceed to review the action for abuse of discretion; in such a case, there is simply no discretion to abuse.” (*Association for Retarded Citizens v. Dept. of Developments Services* (1985) 38 Cal.3d 384, 39; and See also *Morris v. Williams* (1967) 67 Cal.2d 733, 748.)

DOJ adopted the Challenged Regulations on a “file and print” basis, on the premise that they qualify for Subdivision (b)’s APA exemption. But, none of the Challenged Regulations bears a reasonable relation to the registration procedures contemplated by Subdivision (b). Rather, each of them makes substantive changes to *what* firearms can be registered, *who* can register them, or the conditions for registration. Those matters are beyond the scope of Subdivision (b)’s APA exemption; at best there is a doubt as to whether they are. And, because any doubt on that score favors application of the APA, Petitioners are entitled to the relief they seek. Even setting aside the APA issue, almost all of the Challenged Regulations *illegally* alter the scope of the statutes they purport to implement. Accordingly, this Court should issue a writ of mandate to invalidate each of the Challenged Regulations and an order declaring each of them invalid and enjoining their enforcement.

I. A WRIT OF MANDATE SHOULD ISSUE INVALIDATING EACH OF THE CHALLENGED REGULATIONS

“The courts may rely upon mandamus under Code of Civil Procedure section 1085 to review the validity of a quasi-legislative action” like adopting regulations. *Clean Air Constituency v. California State Air Res. Bd.* (1974) 11 Cal.3d 801, 809, citing (Cal.Civil Writs (Cont.Ed.Bar 1970) s 5.37, p. 89.) A court may issue a writ of mandate “to compel the performance of an act

1 which the law specially enjoins, as a duty resulting from an office, trust, or station.” (Code Civ.
2 Proc., § 1085.) Mandate lies when: (1) the respondent has a clear, present duty to act, and (2) the
3 petitioner has a beneficial right to performance of that duty. (*People ex rel. Younger v. Cnty. Of El*
4 *Dorado* (1971) 5 Cal.3d 480, 491.) Code of Civil Procedure § 1086 provides that when a verified
5 petition is submitted by a party “beneficially interested,” a writ “must be issued in all cases where
6 there is not a plain, speedy, and adequate remedy, in the ordinary course of law.” Here, Petitioners
7 readily meet each of the criteria for a writ of mandate to issue.

8 **A. Respondents Have a Clear, Present, and Ministerial Duty to Not Enforce the**
9 **Challenged Regulations Because They Either Do Not Qualify for DOJ’s Limited**
10 **APA Exemption or Alter the Scope of Statutes and Are Thus Invalid**

11 A ministerial duty is one that a government actor is required to perform without the
12 exercise of independent judgment or opinion. *Ellena v. Department of Ins.* (2014) 230 Ca.4th 198,
13 205; *County of San Diego v. State* (2008) 164 Ca.4th 580, 593. As explained above, an agency
14 *must* comply with the APA in promulgating regulations, unless a statute expressly exempts that
15 agency from the APA’s mandates in doing so. (Gov. Code § 11340.5, subd. (a).) Any regulation
16 not adopted in compliance with the APA that is not expressly exempt from the APA is invalid,
17 *Stoneham v. Rushen*, (1984) 156 Cal.App.3d 302, as is any regulation that alters the scope of
18 statutory law. (*Slocum, supra*, 134 Cal.App.4th at 974.)

19 Agencies have no discretion to enforce invalid regulations, but rather a ministerial duty
20 not to enforce them. (See West Ann. Cal. Gov. Code § 11342.1; See also *Terhune v. Superior*
21 *Court* (1998) 65 Cal.App.4th 864.) As explained in detail below, none of the Challenged
22 Regulations qualifies for Subdivision (b)’s APA exemption. Because they were not adopted in
23 compliance with the APA, they are invalid. Moreover, as further explained in detail below, most
24 of the Challenged Regulations are also invalid because they illegally alter the scope of statutory
25 law. Accordingly, Respondents have a duty not to enforce them.

26 **1. Improper Deletion of Prior Lawfully Enacted Definitions**

27 **Section 5469⁴** deletes existing regulations that were lawfully adopted over 17 years ago in

28 ⁴ All references to “Section” are to California Code of Regulations provisions, unless expressly said otherwise.

1 compliance with the APA, some of which underwent extensive revisions prior to being officially
2 adopted.⁵ As an initial matter, DOJ’s exemption from the APA is expressly limited to *making*
3 regulations implementing only Subdivision (b). (Pen. Code, § 30900, subd. (b)(5).) It does not
4 apply to *deleting* any regulations, let alone ones adopted in compliance with the APA years ago.

5 More importantly, however is that each of those repealed regulatory provisions expressly
6 and exclusively applied for the purpose of “identification of assault weapons pursuant to Penal
7 Code section 30515.” (11 C.C.R. § 5469 (repealed).) Because they implement a statute other than
8 Subdivision (b), they are beyond the scope of Subdivision (b)’s APA exemption, which only
9 applies to its own implementation. Had the Legislature intended to allow DOJ to alter such long-
10 standing definitions implementing a whole separate statute without adhering to the APA, it would
11 have been clear in affording DOJ the authority to do so.

12 **2. Illegal Requirement that “Bullet-Button Shotguns” Be Registered**

13 **Section 5470, subd. (a)** states: “A semiautomatic shotgun with an ammunition feeding
14 device that can be readily removed from the firearm with the use of a tool, commonly referred to
15 as a bullet-button weapon, is included in the category of firearms that must be registered” under
16 Subdivision (b). Such a shotgun does not meet any definition for “assault weapon,” neither ones
17 before or after the adoption of SB 880 and AB 1135.

18 Such shotguns, therefore, simply do not fall within the category of firearms that must be
19 registered under Subdivision (b), which only requires registration for “an *assault weapon* that
20 does not have a fixed magazine, as defined in Section 30515, including those weapons with an
21 ammunition feeding device that can be readily removed from the firearm with the use of a tool.”
22 (Pen. Code, § 30900, subd. (b)(1)) (emphasis added). By requiring such shotguns to be so
23 registered, **Section 5470, subd. (a)** illegally expands the scope of Subdivision (b) to require
24 registration of non-“assault weapons” and potentially the scope of the entire AWCA; for, a
25 firearm registered under Subdivision (b) would presumably be treated as an “assault weapon” for
26

27 ⁵ Petition ¶ 74. A copy of the “Final Statement of Reasons,” which summarizes the
28 rulemaking proceedings for each of these definitions, is available on the California Attorney
General’s website at <<https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/fsor.pdf>>.

1 all purposes.

2 What's more, Subdivision (b)'s APA exemption is limited to regulations concerning the
3 "procedures" for registering, i.e., *how* to register. (Pen. Code, § 30900, subd. (b)(1).) It does not
4 extend to regulations concerning *what* firearms need to be registered. Because, **Section 5470**,
5 **subd. (a)** does just that, it does not qualify for Subdivision (b)'s APA exemption.

6 **3. Improper Adoption of New Definitions**

7 **Section 5471** creates new definitions for forty-four terms. But, as explained, DOJ's APA
8 exemption is confined to regulations implementing Subdivision (b), the provisions of which
9 exclusively concern the registration *process*. Neither Subdivision (b) nor the statute in which it
10 appears, Section 30900, is a definitional statute. In fact, Subdivision (b) expressly acknowledges
11 that the firearms needed to be registered are those "*as defined* in Section 30515." DOJ's
12 definitions, therefore, affect the scope of and thus implement Section 30515, not Subdivision (b).
13 As such, they are not within the scope of DOJ's APA exemption.

14 Except for the term "fixed magazine" (now *statutorily* defined, Pen. Code, § 30515, subd.
15 (b)), neither AB 1135 nor SB 880 changed any of the definitions for terms within the AWCA. In
16 fact, the definitions of terms found in the AWCA have remained unchanged and in use for nearly
17 twenty years. Some of the Challenged Regulations' definitional changes to terms for firearms that
18 have been possessed for years could potentially change the legal status of those firearms
19 *retroactively*. What's more, many of those definitions are wholly irrelevant to the newly-
20 classified "assault weapons" that must be registered pursuant to Subdivision (b). For example, the
21 definition for the term "barrel length" has no impact on whether or not a firearm is classified as an
22 "assault weapon" under Penal Code section 30515, subs. (a)(1) or (a)(4). And, **Section 5471**,
23 subd. (a)'s definition for the term "[a]bility to accept a detachable magazine" as "with respect to a
24 semiautomatic shotgun, it does not have a fixed magazine," illegally expands what firearms (i.e.,
25 adds certain shotguns) need to be registered, as explained above in Section 1.

26 In sum, if the Legislature intended to allow DOJ free reign to amend every possible term
27 relating to "assault weapons," especially those longstanding ones completely unaffected by AB
28 1135 and SB 880, it would have expressly stated as much. It did not, and as a result DOJ cannot

shoehorn these definitions into Subdivision (b)'s APA exemption.

4. Illegal Serialization Requirements

Section 5472, subd. (f) prohibits registration of any firearm lacking an engraved serial number. And **Section 5472, subd. (g)** prohibits registration of a home-built firearm (a "Firearm Manufactured By Unlicensed Subject" or "FMBUS") that does "not have a serial number assigned by the Department and applied by the owner or agent pursuant to section 5474.2." **Section 5474.2** requires a "person seeking assault weapon registration" for a FMBUS to "seek a Department issued serial number . . . prior to initiating the assault weapon registration process." Taken together, **subdivisions (f) and (g) of section 5472** and **section 5474.2** prohibit individuals from registering lawfully acquired home-built firearms as "assault weapons" unless first obtaining a DOJ-approved serial number.

First, this is a gross expansion of statutory law. Neither California nor federal law currently requires owners of a FMBUS to affix a DOJ-approved, or any, serial number on their FMBUS.⁶ California recently enacted a law that will impose such requirements, but it does not take effect until January 1, 2019—a full six months *after* the period to register an "assault weapon" has ended. (See Pen. Code § 29180, subd. (c).) That new law will also require additional regulations that are not afforded an APA exemption. (See, Pen. Code § 29182, subd. (f).) With **subdivisions (f) and (g) of section 5472** and **section 5474.2**, DOJ has, therefore, expanded Penal Code section 29182, subd. (f) by advancing its deadline six months earlier. And, they do so without having been adopted in compliance with the APA, despite Penal Code section 29182, subd. (f) not having any APA exemption for its implementing regulations.

Second, **subdivisions (f) and (g) of section 5472** and **section 5474.2** also unlawfully expand the scope of Penal Code section 30900, subd. (b)(3)'s requirement that registrants simply provide a description of the firearm, "including all identification marks," to be registered. For, those regulations require *creation* of information, not just *a description* of existing information.

⁶ Serial numbers on all firearms produced by licensed manufacturers were not required until enactment of the Gun Control Act of 1968. (P.L. 90-618, 82 Stat. 1213, 1223.) Federal law has never required serial numbers on firearms made by persons other than licensed manufacturers and importers engaged in the business of firearms.

1 Nothing in Subdivision (b) requires a firearm to have a serial number to be registered, let alone
2 that one be made and specifically “pre-approved” by DOJ. As such, not only do those provisions
3 unlawfully expand statutory law, but, in doing so, demonstrate that they are outside the scope of
4 Subdivision (b)’s APA exemption, as they have nothing to do with the registration process.

5 **5. Illegally Compelled Non-Liability Clause**

6 **Section 5473, subd. (b)(1)** requires registrants to agree to hold DOJ harmless for “any
7 hardware, software, information, or other items” as a condition of registering their firearms. This
8 provision is patently unrelated to implementing registration procedures in Subdivision (b) and
9 thus does not qualify for its APA exemption. But even if DOJ sought to adopt such a requirement
10 in compliance with the APA, it could not. Such a provision directly conflicts with Article 1 of the
11 California Constitution and the Information Practices Act (“IPA”). Both specifically protect an
12 individual’s right to privacy, limit DOJ’s ability to disclose personal information, and provide
13 statutory remedies for violations. (See Cal. Const., art. I, § 1; Civ. Code, §§ 1798 et seq.)
14 Respondents simply cannot unilaterally grant themselves an exception to statutory restrictions
15 imposed on them.

16 **6. Excessive Registration Information Requirement**

17 Penal Code section 30900, subd. (b)(3) is specific as to exactly what personal information
18 is required for registration: “registrant’s full name, address, telephone number, date of birth, sex,
19 height, weight, eye color, hair color, and California driver’s license number or California
20 identification card number.” **Section 5474, subd. (a)**, however, adds to the information required
21 from an applicant, demanding: *military ID number, U.S. citizenship status, place of birth, country*
22 *of citizenship, and alien registration number*. As such, **Section 5474, subd. (a)** unlawfully
23 expands the scope of Subdivision (b). Moreover, a regulation concerning *what* information must
24 be provided in a registration is not the same as one concerning *how* information is to be provided
25 in a registration. The latter is entitled to Subdivision (b)’s APA exemption. The former, which
26 **Section 5474, subd. (a)** falls under, is not.

27 **Section 5474, subd. (c)** makes a prerequisite to “assault weapon” registration access to
28 fairly expensive equipment, by requiring “clear digital photographs” of any firearm sought to be

1 registered to be included in the registration application. But, Subdivision (b) merely requires that
2 the registration contain a “description” of the firearm, not an *actual depiction* of it. Such an
3 expansion of Subdivision (b) is unlawful. Tellingly, identical language to Subdivision (b)’s can be
4 found elsewhere in California statutory law regarding firearm registration without requiring such
5 photographs. *See, e.g.,* Pen. Code, § 27560, subd. (a)(1), requiring anyone moving into California
6 with a firearm to report their ownership to DOJ on a form that contains “a description of the
7 firearm in question.” Notably, this form—which has been used by DOJ for years—has never
8 required individuals to provide photographs of the firearm to be registered.

9 **7. Joint-Registration Restrictions**

10 Penal Code section 30955 requires DOJ to accept joint registrations for any “assault
11 weapon” owned by “family members residing in the same household.” **Section 5474.1, subd. (b)**,
12 however, impermissibly limits the scope of that statutory provision by narrowly defining the term
13 “family members” to only include: (1) Spouses; (2) Parent to Child; (3) Child to Parent; (4)
14 Grandparent to Grandchild; (5) Grandchild to Grandparent; (6) Domestic Partner; and (7)
15 Siblings. Penal Code section 30955 makes no such limitation on that definition. Nor does its
16 legislative history indicate any intent to do so.

17 What’s more, as explained, DOJ’s APA exemption only applies to implementing
18 Subdivision (b). Because **Section 5474.1, subd. (b)** implements an entirely different statute, Penal
19 Code section 30955, it does not qualify for that exemption and must have been adopted in
20 compliance with the APA. Tellingly, DOJ has been accepting joint registrations since 1989, and
21 yet in every past instance where individuals were required to register “assault weapons” DOJ has
22 never limited that term’s scope. If Respondents wish to limit the term now, they *may* be able to do
23 so through typical APA rulemaking procedures. In fact, DOJ attempted to do just that in 2000, but
24 after receiving public comments, admitted that had the Legislature intended to so limit the scope
25 of the term, it “should have been statutorily stated in a much clearer manner.”⁷ But DOJ cannot do
26 so without following the typical APA rulemaking procedures.

27 ⁷ *Department of Justice Regulations for Assault Weapons and Large Capacity Magazines:*
28 *Final Statement of Reasons*, <https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/regs/fsor.pdf>.

1 **Section 5474.1, subd. (c)** requires joint registrants to provide “proof of address,” despite
2 there being no such requirement anywhere in the California Code. Subdivision (b)(3) provides the
3 specific content that must be included with a registration and “proof of address” is not mentioned.
4 **Section 5474.1, subd. (c)**, therefore, likewise unlawfully expands the scope of the statutory
5 requirements to jointly register an “assault weapon.”

6 **B. As Owners of “Assault Weapons” Subject to Registration, Petitioners Have a Clear,
7 Present, and Beneficial Interest in the Outcome of this Proceeding**

8 A petitioner can establish a beneficial right to the performance of a duty owed by a
9 respondent, if he or she can show some special interest to be served or particular right to be
10 preserved or protected over and above the interest held in common with the public at large. *Save*
11 *the Plastic Bag Coal. v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 165. The APA is
12 designed to provide the public with a meaningful opportunity to participate in the adoption of
13 regulations by California state agencies. (*Armistead v. State Pers. Bd.* (1978) 22 Cal.3d 198, 204.)
14 This is because “the party subject to regulation is often in the best position, and has the greatest
15 incentive, to inform the agency about possible unintended consequences of a proposed
16 regulation.” (*Tidewater Marine W., Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 569.) What’s more,
17 public participation “directs the attention of agency policy makers to the public they serve, thus
18 providing some security against bureaucratic tyranny.” (*Ibid.*)

19 Generally, all Petitioners are beneficially interested in the outcome of this proceeding
20 because they seek to invalidate regulations which are currently being unlawfully enforced against
21 them. Specifically, Petitioners were denied their statutory right under the APA to be heard and
22 provide input on the Challenged Regulations. The relief that Petitioners seek from this Court will
23 relieve them from that injury.

24 Moreover, certain provisions of the Challenged Regulations further injure specific
25 Petitioners. For example, Petitioners Stallard, Mendoza, and other similarly-situated individuals,
26 including countless members and supporters of Petitioner CRPA, are being forced to comply with
27 the illegal regulation requiring the registration of their “bullet-button” shotguns. (Petition ¶ 95;
28 Code Regs., tit. 11, § 5470, subd. (d); Penal Code, § 30515, subd. (a)(7).) Petitioners Barrios and

1 other similarly-situated individuals, including members and supporters of Petitioner CRPA, are
2 being forced to comply with DOJ’s illegal regulation regarding the registration procedures for
3 firearms lacking serial numbers. (Petition ¶ 138; Code Regs., tit. 11, §§ 5472, subds. (f)-(g),
4 5474.2; Penal Code §§ 29180-29184.) And, countless members and supporters of Petitioner
5 CRPA are prohibited from jointly-registering their firearms because DOJ has unlawfully
6 narrowed the scope of what “family members” qualify. (Petition ¶ 204; Code Regs., tit. 11, §
7 5474.1, subds. (b)-(c); Penal Code, § 30955.) Accordingly, Petitioners are interested in the
8 outcome of this action.

9
10 **C. Petitioners Have no Plain, Speedy, Or Adequate Legal Remedy from the Ongoing
Harm Caused by Respondents’ Enforcement of the Challenged Regulations**

11 Whether a potential alternate remedy is available “in the ordinary course of law” involves
12 an examination of: (1) the legal foundation for that remedy; and (2) how the remedy relates to the
13 relief sought by the plaintiff. *Villery v. Dep’t of Corr. & Rehab.* (2016) 246 Cal.App.4th 407, 414.
14 Courts have regarded this examination as one of fact imposed by the circumstances of each
15 particular case.

16 If Petitioners fail to register their firearms as “assault weapons,” they could face a
17 potential felony conviction. (Pen. Code §§ 30600-30605.) And should they register their firearms,
18 the harm they seek to avoid with this lawsuit is inflicted and cannot be undone. No money
19 damages can remedy either injury. And, Petitioners have until July 1, 2018 to either obtain relief
20 or make that choice. As such, they have no plain, speedy, or adequate legal remedy to the harm
21 caused by Respondents’ enforcement of the Challenged Regulations.

22 Specific provisions also cause additional injury to Petitioners Stallard, Mendoza, Barrios,
23 and CRPA for which there is no plain, speedy, or adequate legal remedy. Petitioners Stallard,
24 Mendoza, and other similarly-situated individuals (including members and supporters of
25 Petitioner CRPA) are being forced to register their “bullet-button” shotguns that are not classified
26 as “assault weapons” and, without the relief sought, have no other recourse but to comply with
27 Respondents’ illegally adopted regulations. (Petition ¶ 96; Code Regs., tit. 11, § 5470, subd. (d);
28 Penal Code, § 30515, subd. (a)(7).) Likewise, Petitioner Barrios and other similarly-situated

1 individuals, including members and supporters of Petitioner CRPA, without the relief sought,
2 have no other recourse but to comply with Respondents' illegally adopted regulations regarding
3 the registration procedures for firearms lacking serial numbers. (Petition ¶ 139; Code Regs., tit.
4 11, §§ 5472, subds. (f)-(g), 5474.2; Penal Code, §§ 29180-29184.) And members and supporters
5 of Petitioner CRPA who are otherwise statutorily entitled are being prohibited from jointly-
6 registering their firearms or are being required to provide documentation in excess of what is
7 statutorily required to jointly-register. (Petition ¶ 205; Code Regs., tit. 11, § 5474.1, subds. (b)-
8 (c); Penal Code, § 30955.) Accordingly, based on the foregoing and the verified Petition showing
9 Petitioners have no plain, speedy, or adequate remedy at law, Petitioners are entitled to issuance
10 of a writ. See C.C.P. § 1086.

11 **II. A DECLARATION THAT EACH OF THE CHALLENGED REGULATIONS IS INVALID AND**
12 **MUST BE ENJOINED SHOULD ISSUE**

13 An interested person has the right to “obtain a judicial declaration as to the validity of any
14 rule, regulation, order or standard of general application adopted by any State agency to
15 implement, interpret or make specific, any law enforced or administered by it or to govern its
16 procedure.” (*Bess v. Park* (1955) 132 Cal.App.2d 49, 281 P.2d 556; *see also* Gov. Code § 11350.)

17 Petitioners are individuals and an organization representing individuals who are subject to
18 the Challenged Regulations. Petitioners contend that Respondents are illegally enforcing the
19 Challenged Regulations to the detriment of Petitioners, because, for the reasons explained above,
20 each such regulation is invalid and unenforceable. Yet, Respondents continue to enforce them.
21 Accordingly, this Court should declare each of the Challenged Regulations invalid and
22 unenforceable, and enjoin Respondents or any of their agents or employees from enforcing each
23 of them.

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1 **CONCLUSION**

2 Based on the foregoing, this Court should issue a writ invalidating each of the Challenged
3 Regulations, declare each of them void and unenforceable, and enjoin their enforcement.
4

5 Dated: March 27, 2018

MICHEL & ASSOCIATES, P.C.

6
7 /s/Sean A. Brady
Sean A. Brady
8 Attorneys for Petitioners
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA
3 COUNTY OF FRESNO

4 I, Laura Palmerin, am employed in the City of Long Beach, Los Angeles County,
5 California. I am over the age eighteen (18) years and am not a party to the within action. My
6 business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

7 On March 27, 2018, I served the foregoing document(s) described as:

8 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
9 **PLAINTIFFS-PETITIONERS' MOTION FOR ISSUANCE OF WRIT OF**
10 **MANDATE AND JUDICIAL DECLARATION**

11 on the interested parties in this action by placing

12 [] the original
13 [X] a true and correct copy

14 thereof by the following means, addressed as follows:

15 P. Patty Li
16 patty.li@doj.ca.gov
17 Deputy Attorney General
18 California Department of Justice
19 Office of the Attorney General
20 455 Golden Gate Ave., Suite 11000
21 San Francisco, CA 94102

Attorneys for Respondents

22 X (BY ELECTRONIC MAIL) As follows: I served a true and correct copy by
23 electronic transmission through OneLegal. Said transmission was reported and completed without
24 error.

25 Executed on March 27, 2018, at Long Beach, California.

26 X (STATE) I declare under penalty of perjury under the laws of the State of
27 California that the foregoing is true and correct.

28 /s/Laura Palmerin
Laura Palmerin