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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF FRESNO
11

12
13 **DANNY VILLANUEVA, NIALL
STALLARD, RUBEN BARRIOS,
14 CHARLIE COX, MARK STROH,
ANTHONY MENDOZA, AND
15 CALIFORNIA RIFLE & PISTOL
ASSOCIATION, INCORPORATED,**

16
17 Petitioners,

18 v.

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

23 Respondents.
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25
26
27
28

Case No. 17CECG03093

**OPPOSITION TO VERIFIED PETITION
FOR WRIT OF MANDATE AND
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

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

Action Filed: September 7, 2017

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INTRODUCTION

The Legislature created a new category of banned assault weapons (bullet-button weapons), gave Respondents broad statutory authority to promulgate regulations for the purpose of registering such weapons, and also exempted these regulations from the requirements of the Administrative Procedure Act (“APA”). Petitioners’ challenge to these regulations fails because none of the regulations conflict with the assault weapons law, and all are reasonably necessary for the registration process. Accordingly, the petition should be dismissed, and judgment entered for Respondents.

BACKGROUND

I. REGISTRATION OF BULLET-BUTTON ASSAULT WEAPONS

The Assault Weapons Control Act (“assault weapons law”) (Pen. Code, §§ 30500, et seq.) generally restricts the possession, purchase, sale, manufacture, and distribution of assault weapons, excepting only those assault weapons acquired prior to adoption of the law, so long as they were timely registered with the Department of Justice (“DOJ”). (*Id.*, § 30900.) Under this grandfathering exception, owners may lawfully possess and sell registered weapons, notwithstanding the general ban. (See, e.g., *id.*, § 30675, subd. (b)(1).)

Recent amendments to the assault weapons law established a new registration process for “bullet-button” assault weapons.¹ A bullet button is a magazine release device on a firearm that requires the use of a tool (which can be a bullet or ammunition cartridge) to remove the magazine from the firearm. As of January 1, 2017, an assault weapon may now include a weapon that “does not have a fixed magazine,” and “fixed magazine” is defined as “an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action.”² (Pen. Code, § 30515, subds. (a)(1),

¹ Stats.2016, c. 40 (A.B. 1135), §§ 1, 3; Stats.2016, c. 48 (S.B. 880), §§ 1, 3. The legislative history for these amendments reflects a finding that unless the “bullet-button loophole” is closed, “the assault weapon ban is severely weakened, and these types of military-style firearms will continue to proliferate on our streets and in our neighborhoods.” (See, e.g., RJN, Ex. 1 at 3, Ex. 2 at 3, Ex. 5 at 6.)

² The firearm action is the mechanism by which a firearm is loaded, fired, and unloaded. Disassembly of the firearm action requires interrupting the action such that it temporarily will not

1 (a)(4), (b).) A weapon equipped with a bullet button do not have a “fixed magazine,” as defined
2 by statute, and may now qualify as assault weapons, depending on the weapon’s other
3 characteristics. (*Id.*, § 30515.) Weapons of this kind that were lawfully possessed before January
4 1, 2017 may be grandfathered if they are registered before July 1, 2018. (*Id.*, § 30900, subd.
5 (b)(1).)

6 These amendments also authorize DOJ to promulgate “regulations for the purpose of
7 implementing” the new registration process, and such regulations “are exempt from the
8 requirements of the [APA].” (Pen. Code, § 30900, subd. (b)(5).) Pursuant to this exemption,
9 DOJ submitted registration regulations to the Office of Administrative Law (“OAL”) for
10 publication in the California Code of Regulations (“CCR”). (See Gov. Code, § 11343.8.) OAL
11 published these regulations on July 31, 2017, in title 11 of the CCR. (Request for Judicial Notice
12 in Support of Opposition to Writ Petition (“RJN”), Exs. 10-15.)

13 **II. PROCEDURAL BACKGROUND**

14 Petitioners originally filed this action as a complaint for declaratory and injunctive relief.
15 (Compl. for Decl. & Inj. Relief, Sept. 7, 2017.) The Court sustained Respondents’ demurrer with
16 leave to amend, finding that the action should have been filed as a writ petition. (Law & Mot.
17 Min. Order, Mar. 9, 2018.) Petitioners filed their amended pleading as a petition for writ of
18 mandate and complaint for declaratory and injunctive relief. (First Am. Verified Pet. for Writ of
19 Mandate, Mar. 21, 2018.)

20 **LEGAL STANDARD**

21 Petitioners seek a writ of mandate pursuant to Code of Civil Procedure section 1085, to
22 review DOJ’s decision to promulgate the registration regulations pursuant to an APA exemption.
23 This administrative determination is reviewed for abuse of discretion. (See *Ridgecrest Charter*
24 *School v. Sierra Sands Unified School Dist.* (2005) 130 Cal.App.4th 986, 1003.) Under this
25 standard, the court “exercise[s] limited review in ordinary mandamus proceedings. [It] may not
26 reweigh the evidence or substitute [its] judgment for that of the agency. [It] uphold[s] an agency
27 _____
28 function in a semiautomatic fashion. A firearm with a fixed magazine thus requires more time to
change the magazine, as compared to a firearm without a fixed magazine.

1 action unless it is arbitrary, capricious, lacking in evidentiary support, or was made without due
2 regard for the petitioner’s rights.” (*Ibid.*, citation omitted.)

3 When an agency’s action depends solely upon the correct interpretation of a statute, the
4 court exercises independent judgment. (*California Correctional Peace Officers’ Assn. v. State*
5 (2010) 181 Cal.App.4th 1454, 1460.) In conducting this review, courts “are guided by the
6 principle that an administrative [agency’s] interpretation [of controlling statutes] . . . will be
7 accorded great respect by the courts and will be followed if not clearly erroneous.” (*Ibid.*,
8 citations and internal quotations omitted.)

9 To prevail here, Petitioners must show that the challenged regulations are either (1) outside
10 the scope of DOJ’s statutory APA exemption, or (2) not reasonably necessary to effectuate the
11 registration requirement, even if within that exemption. (See *Yamaha Corp. of America v. State*
12 *Bd. of Equalization* (1998) 19 Cal.4th 1, 9-11 (*Yamaha Corp.*).) “Where the Legislature has
13 delegated to an administrative agency the responsibility to implement a statutory scheme through
14 rules and regulations, the courts will interfere only where the agency has clearly overstepped its
15 statutory authority or violated a constitutional mandate.” (*Ford Dealers Assn. v. Department of*
16 *Motor Vehicles* (1982) 32 Cal.3d 347, 356 (*Ford Dealers*).)

17 When considering whether a challenged regulation is “within the scope of the authority
18 conferred,” the court reviews “for consistency with controlling law.” (*California Assn of Medical*
19 *Products Suppliers v. Maxwell-Jolly* (2011) 199 Cal.App.4th 286, 312, citations omitted.) To
20 find that a challenged regulation is not reasonably necessary to effectuate the purpose of the
21 statute, Petitioners must show that the agency’s action was arbitrary, capricious, or without
22 reasonable or rational basis. (*Id.*, 199 Cal.App.4th at p. 315, citations omitted.) There is a
23 “strong presumption of regularity” for an agency’s determination that a regulation is reasonably
24 necessary (*Yamaha, supra*, 19 Cal.4th at p. 11), “out of deference to the separation of powers
25 between the Legislature and the judiciary, to the legislative delegation of administrative authority
26 to the agency, and to the presumed expertise of the agency within its scope of authority” (*San*
27 *Francisco Fire Fighters Local 798 v. City & County of San Francisco* (2006) 38 Cal.4th 653,
28 667).

ARGUMENT

I. THE DECLARATORY RELIEF CLAIMS ARE NOT COGNIZABLE

The Petition for Writ of Mandate is also styled as a “Complaint for Declaratory and Injunctive Relief.” But declaratory relief “cannot be joined with a writ of mandate reviewing an administrative determination.” (*City of Pasadena v. Cohen* (2014) 228 Cal.App.4th 1461, 1467.) Where a court’s ruling on a petition for a writ of mandate resolves all allegations central to the petitioner’s claims, that ruling necessarily resolves the petitioner’s demands for declaratory or injunctive relief. (See *Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 699-700; *County of Del Norte v. City of Crescent City* (1999) 71 Cal.App.4th 965, 973.) Thus, declaratory relief is not available here, and the Court’s decision on the writ petition will resolve all claims.³

II. THE CHALLENGED REGULATIONS ARE BOTH WITHIN DOJ’S STATUTORY RULEMAKING AUTHORITY AND REASONABLY NECESSARY FOR THE BULLET-BUTTON REGISTRATION PROCESS

Petitioners contend that the challenged regulations: (1) contain requirements not set forth in the assault weapons law; and (2) are unrelated to the registration process. Neither argument demonstrates an abuse of discretion. The first argument fails because the statutory rulemaking authority conferred on DOJ is broad, and not limited to what is already provided by the assault weapons law itself. Here, as is generally the case, “an administrative agency is not limited to the exact provisions of a statute in adopting regulations to enforce its mandate,” and the “absence of any specific statutory provisions regarding the regulation of an issue does not mean that such a regulation exceeds statutory authority,” because the agency is “authorized to ‘fill up the details’ of the statutory scheme.” (*PaintCare v. Mortensen* (2015) 233 Cal.App.4th 1292, 1298-99, 1307-08 [regulations requiring information not required by statute did not conflict with authorizing statute], brackets omitted, quoting *Ford Dealers, supra*, 32 Cal.3d at p. 362.)

³ In addition, the claims for declaratory relief under Government Code section 11350 are foreclosed by governing Supreme Court law: “Section 11350 has no application to the guidelines . . . because the Legislature specifically exempted the guidelines from the provisions of the California Administrative Procedure Act.” (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 169 fn.4.)

1 The second argument fails because all of the challenged regulations are reasonably
2 necessary to implement the bullet-button registration process. Petitioners wrongly assert that
3 DOJ can only issue regulations for registration “procedures,” what Petitioners describe as “*how to*
4 *register.*” (See, e.g., Opening Br. at 13.) Rather than impose any restriction, the law broadly
5 authorizes DOJ to “adopt regulations for the purpose of implementing” the registration process.
6 This includes the authority to do whatever is necessary to administer the statutory scheme being
7 implemented. (Pen. Code, § 30900, subd. (b)(5); *Association of California Insurance Companies*
8 *v. Jones* (2017) 2 Cal.5th 376, 391 (*Jones*) [grant of regulatory authority to “administer” the
9 authorizing statute is equivalent to authority to “carry out” or “implement” the statute].) The
10 APA exemption thus authorizes DOJ to make any and all rules necessary to administer the bullet-
11 button registration process. This includes providing definitions that make clear the types of
12 firearms to be registered (registration definitions); registering weapons that the Legislature has
13 required to be registered (registration of bullet-button shotguns); obtaining information necessary
14 to uniquely identify each registered weapon (serial number and digital photo requirements) or
15 confirming an applicant’s eligibility to register a firearm (registration information requirements);
16 preventing abuse of the joint registration option (“family member” definition and proof-of-
17 address requirements); and establishing parameters for the electronic registration process required
18 by law (terms of use). As set forth below, these regulations ensure that only eligible weapons are
19 registered, only by eligible applicants, through a transparent, reliable process.⁴

20 **A. Consolidation of Definitions Applicable to the Bullet-Button Registration**
21 **Process**

22 Petitioners incorrectly contend that DOJ improperly repealed five definitions originally
23 promulgated in 2000. These definitions now appear in section 5471, along with all of the other

24 _____
25 ⁴ This interpretation of DOJ’s rulemaking power is also consistent with the purpose of the assault
26 weapons law, which is to protect the public from “the proliferation and use of assault weapons
27 [that] poses a threat to the health, safety, and security of all citizens of this state.” (Pen. Code, §
28 30505, subd. (a); see *Mejia v. Reed* (2003) 31 Cal.4th 657, 663 [considering the public policy
consequences].) Registration is a key component of the Legislature’s regulation of weapons
“designed only to facilitate the maximum destruction of human life.” (See, e.g., RJN Ex. 1 at 3,
Ex. 2 at 3, Ex. 5 at 6.)

1 definitions that apply in the bullet-button registration process.⁵ Two of these definitions
2 (“Forward pistol grip” and “Thumbhole stock”) were moved to section 5471 without change.
3 (§ 5471, subds. (t), (qq).) The remaining three (“Detachable magazine,” “Flash suppressor,” and
4 “Pistol grip that protrudes conspicuously beneath the action of the weapon”) were moved to
5 section 5471, with the addition of specific qualifying examples. (§ 5471, subds. (m), (r), (z).)
6 Consolidation of definitions is reasonably necessary for the registration process in that it prevents
7 any confusion that would otherwise stem from applying two separate sets of definitions.
8 Preventing such confusion is well within DOJ’s authority to make rules implementing the bullet-
9 button registration process, because “[t]o conclude that . . . the Legislature [must] define in
10 advance every problem it expects an agency to address is to suggest that the Legislature had little
11 need for agencies in the first place.” (*Jones, supra*, 2 Cal.5th at p. 398.)

12 **B. Definitions Applicable to the Bullet-Button Registration Process**

13 The forty-four terms defined in section 5471 appear either in the statutory provisions that
14 were amended to include bullet-button weapons,⁶ or elsewhere in the proposed regulations, and
15 thus are reasonably necessary to administer the bullet-button registration process. Some help
16 define the type of weapons that may be registered. For example, the regulations define
17 “Detachable magazine” (§ 5471, subd. (m)) because the assault weapons law uses that term to
18 describe the weapons that should be registered. (See, e.g., Pen. Code, § 30515, subd. (a)(4)(D)
19 [“the capacity to accept a detachable magazine at a location outside of the pistol grip”].) Several
20 definitions are for terms referenced by other definitions. For example, “Bullet” is part of the term
21 “Bullet-button,” and is defined differently from “Cartridge,” which helps to distinguish bullets
22 and cartridges when that information is requested as part of the registration process.⁷ (§ 5471,
23 subds. (e), (f), (i).)

24 _____
25 ⁵ Unless otherwise specified, all future references to a section are to a section within title 11 of the
26 California Code of Regulations.

26 ⁶ Pen. Code, § 30515, subds. (a)(1)(A)-(F), (a)(4)(A)-(D), (b).

27 ⁷ Another defined term that does not appear in the assault weapons law is “Spigot.” (§ 5471,
28 subd. (kk).) This definition informs applicants that some muzzle devices are also spigots, which
can be used to fire grenades. A firearm with a spigot is likely to have a grenade launcher, which

1 Other definitions allow collection of information required for the registration process. The
2 definitions of “Barrel length” and “Overall length of less than 30 inches” provide instructions for
3 measuring a weapon’s length. (§ 5471, subds. (d), (x).) “Barrel length” is a basic piece of
4 identifying information collected for every weapon reported to or registered with DOJ, much like
5 information about a weapon’s manufacturer or model, and the statute requires that the registry
6 “shall consist of” specified information, including barrel length of the firearm. (Pen. Code,
7 § 11106, subd. (b)(2)(D).) The definition of “Overall length of less than 30 inches” pertains to
8 the statutory definition of an assault weapon as “[a] semiautomatic, centerfire rifle that has an
9 overall length of less than 30 inches.” (*Id.*, § 30515, subd. (a)(3).) Lawfully possessed weapons
10 meeting this definition, with or without a bullet-button, should have already been registered and
11 DOJ will reject any attempt to register those weapons now.

12 Petitioners challenge all of the definitions, arguing that some were previously defined by
13 regulation, and that none of the defined terms were changed by the statutory bullet-button
14 amendments. Neither of these arguments provides an adequate basis for invalidating the
15 regulations. DOJ’s APA-exempt rulemaking authority includes the power to define all terms
16 necessary to understand and comply with the bullet-button registration process, including those
17 terms that predated the amendments. These definitions apply “[f]or purposes of Penal Code
18 section 30900,” which governs registration of assault weapons; and for purposes of “Articles 2
19 and 3 of this Chapter,” which refers to the portions of the California Code of Regulations
20 governing registration of assault weapons. (§ 5471.) All of the definitions fall within DOJ’s
21 rulemaking authority because they are reasonably necessary to the registration process.

22 There is no merit to the suggestion that because the weapons subject to registration are
23 found in one statutory provision, and the registration requirement in another, DOJ lacks authority
24 to define terms governing the weapons eligible for registration. Implementation of the bullet-

25 _____
26 may qualify it as an assault weapon. (Pen. Code, § 30515, subd. (a)(1)(D).) The regulations also
27 define “Receiver, unfinished” because that is the initial form of a Firearm Manufactured By
28 Unlicensed Subject (“FMBUS”), which is a type of potentially registrable weapon. (§ 5471,
subds. (cc), (s).) A “Receiver” is defined as “the basic unit of a firearm which houses the firing
and breech mechanisms and to which the barrel and stock are assembled.” (*Id.*, subd. (aa).)

1 button registration process must take into account the entire statutory scheme of which it is a part,
2 and identify the weapons that may be registered. The amendments providing for bullet-button
3 weapon registration refer to assault weapons “as defined in Section 30515.” It is thus reasonably
4 necessary for implementing regulations to define the terms used in that section, all but one of
5 which are otherwise undefined.⁸ It is also reasonably necessary for implementing regulations to
6 define terms describing weapons that are ineligible for this new bullet-button registration process.
7 (See, e.g., Pen. Code, § 30515, subd. (a)(3).)

8 These definitions reflect DOJ’s judgment that this information will assist firearm owners in
9 navigating the registration process, and allow DOJ to carry out the registration process efficiently.
10 Courts defer to the agency’s expertise and apply a “strong presumption of regularity” to the
11 agency’s determination that a regulation is reasonably necessary. (*Yamaha, supra*, 19 Cal.4th at
12 p. 11.) Deference to DOJ’s expertise is warranted here, because DOJ has maintained a registry of
13 grandfathered assault weapons since at least 1991.⁹

14 **C. Bullet-Button Shotgun Registration**

15 Petitioners have not identified any statutory provision in conflict with the regulation
16 requiring registration of bullet-button shotguns. (§ 5470, subd. (d).)¹⁰ Instead, they argue,
17 without further elaboration, that “[s]uch a shotgun does not meet any definition for ‘assault
18 weapon,’ neither ones before or after the adoption of” the bullet-button amendments. (Opening
19 Br. at 12.) This argument fails on several grounds.

20 First, the regulation requiring registration of bullet-button shotguns is consistent with the
21 plain language of the statutory registration requirement, which provides:

22 Any person who, from January 1, 2001, to December 31, 2016, inclusive, lawfully
23 possessed an assault weapon that does not have a fixed magazine, as defined in
24 Section 30515, *including those weapons* with an ammunition feeding device that

25 ⁸ The definition of “fixed magazine” in section 5471 simply duplicates the statutory definition.
(Cf., Pen. Code, § 30515, subd. (b), and Cal. Code regs., tit. 11, § 5471, subd. (p).)

26 ⁹ Former Pen. Code, § 12285, subd. (a) (1990) (requiring assault weapon registration by January
27 1, 1991).

28 ¹⁰ The opening brief cites this regulation as section 5470, subdivision (a), but the language quoted
in the brief is from section 5470, subdivision (d). (Opening Br. at 12.)

1 can be readily removed from the firearm with the use of a tool, shall register the
2 firearm before July 1, 2018[.]

3 (Pen. Code, § 30900, subd. (b)(1), emphasis added.) Thus, the weapons required to be registered
4 are not limited to assault weapons as specifically defined in statute, but in addition “includ[e]
5 those weapons with an ammunition feeding device that can be readily removed from the firearm
6 with the use of a tool,” that is, “weapons” with a bullet button. As commonly understood and as
7 used in the assault weapons law, the term “weapons” encompasses shotguns.¹¹ The phrase
8 “including those weapons” indicates that the registration requirement applies to weapons
9 equipped with a bullet button, including bullet-button shotguns. (See *Ornelas v. Randolph* (1993)
10 4 Cal.4th 1095, 1101 [the word “includes” is ordinarily a term of enlargement]; see also *People v.*
11 *Arnold* (2006) 145 Cal.App.4th 1408, 1413-1414 [interpreting the phrase “the term ‘firearm’
12 includes the frame or receiver of the weapon” to mean that a “frame or receiver” is sufficient to
13 constitute a firearm, regardless of whether a “frame or receiver” would satisfy the definition of
14 “firearm” provided in another statutory provision].)

15 The assault weapons law must be interpreted to “giv[e] significance to every word, phrase,
16 sentence, and part of an act in pursuance of the legislative purpose.” (*Sierra Club v. Superior*
17 *Court* (2013) 57 Cal.4th 157, 166, citation omitted.) Bullet-button shotguns are “weapons with
18 an ammunition feeding device that can be readily removed from the firearm with the use of a
19 tool,” and are thus required to be registered. (Pen. Code, § 30900, subd. (b)(1).) Because bullet-
20 button shotguns fall within the plain language of the registration requirement, there is no conflict
21 between the assault weapons law and the regulation requiring their registration.

22 Second, bullet-button shotguns fall within the statutory definition of an assault weapon.
23 Penal Code section 30515, subdivision (a)(7) defines as an assault weapon, “A semiautomatic

24
25 ¹¹ Part of the law provides that “‘assault weapon’ means the following designated semiautomatic
26 firearms,” and then lists various rifles, pistols, and shotguns. (Pen. Code, § 30510, subs. (a)-(c).)
27 The law also describes “assault weapons” as comprising certain rifles, pistols, and shotguns. (*Id.*,
28 § 30515, subs. (a)(1)-(8).) And, various other references in the Penal Code indicate that a
shotgun is a type of weapon. (See, e.g., *id.*, § 17190 [“‘shotgun’ means a weapon...intended to
be fired from the shoulder”]; § 16590, subd. (t) [“generally prohibited weapon” includes “short-
barreled shotgun”].)

1 shotgun that has the ability to accept a detachable magazine.” (Pen. Code, § 30515, subd. (a)(7).)
2 This encompasses shotguns equipped with a bullet button. A bullet-button shotgun has the
3 “ability to accept a detachable magazine” because the bullet button allows the magazine to be
4 easily removed without disassembling key components of the weapon. The registration
5 regulation defining “ability to accept a detachable magazine” to mean, “with respect to a
6 semiautomatic shotgun, it does not have a fixed magazine” (§ 5471, subd. (a)), makes this
7 explicit.

8 DOJ may by regulation specify the weapons that are within the categories of assault
9 weapons established by the Legislature. The Legislature has defined specific weapons as assault
10 weapons (Pen. Code, § 30510), but it has also defined assault weapons by characteristic (*id.*,
11 § 30515), and delegated to DOJ general rulemaking authority to administer registration of the
12 newest class of these weapons (*id.*, § 30900, subd. (b)(5)). DOJ thus has the authority to define
13 statutory terms relevant to the registration process, including those terms relating to assault
14 weapons defined by characteristic. (See *Jones, supra*, at pp. 393, 398 [where statute defined
15 specific activities as “unfair or deceptive acts or practices,” regulation defining additional activity
16 as such was within agency’s rulemaking authority].) The bullet-button shotgun registration
17 requirement is consistent with the intent of the Legislature, because the same dangers posed by
18 bullet-button equipped rifles and pistols are also posed by bullet-button equipped shotguns.

19 There is no basis whatsoever for the premise, implicit in the Petition (but not supported in
20 the opening brief), that prior to the recent amendments, the Legislature affirmatively excluded
21 bullet-button shotguns from the definition of assault weapon in Penal Code section 30515,
22 subdivision (a)(7). (See Petition, ¶ 92.) There is therefore no basis for the argument that the
23 Legislature’s failure to amend the definition of assault weapon to affirmatively include bullet-
24 button shotguns reflects an intent to continue to exclude these weapons from the definition.
25 Under the *regulatory* definition of “detachable magazine” promulgated by DOJ in 2000, bullet-
26 button weapons were deemed to lack the ability or capacity to accept a “detachable magazine,” as
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1 described in various subdivisions of former Penal Code section 30515.¹² Such weapons thereby
2 fell outside the definition of “assault weapon.” The Legislature itself never defined the term
3 “detachable magazine” in statute or in any way excluded bullet-button shotguns from the
4 definition of an assault weapon. The requirement to register bullet-button shotguns is thus
5 consistent with the plain language of both the registration provision and with the statutory
6 definition of assault weapons required to be registered, and is reasonably necessary to effectuate
7 the Legislature’s intent to register bullet-button shotguns.

8 **D. Serial Number Requirement for Registered Homebuilt Weapons**

9 The requirement that owners of homebuilt bullet-button assault weapons obtain and apply a
10 DOJ-issued serial number as a condition of registration (§§ 5472, subd. (g), 5474.2) is reasonably
11 necessary for the registration process.¹³ The serial number requirement—which applies only to
12 registration of homebuilt bullet-button assault weapons, not to all homebuilt weapons or all
13 weapons without a serial number—stems from the statutory directive that registered weapons be
14 identified uniquely. (Pen. Code, § 30900, subd. (b)(3).) DOJ-issued serial numbers for registered
15 homebuilt weapons will allow law enforcement to positively identify such weapons if it they are
16 encountered in the field, are used in a crime, or need to be confiscated from persons prohibited
17 from possessing firearms. Owner-selected serial numbers (e.g., the initials of the person who
18 built the weapon and the date it was built) would not ensure a unique identifier, because unlike
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21 ¹² The regulation promulgated in 2000 defined a “detachable magazine” as “any ammunition
22 feeding device that can be removed readily from the firearm with neither disassembly of the
23 firearm action *nor use of a tool* being required.” (Former Cal. Code Regs., tit. 11, § 5469, subd.
24 (a) (2016), emphasis added.) The regulation also specified that “[a] bullet or ammunition
25 cartridge is considered a tool.” (*Ibid.*) Bullet-button weapons entered the market in California in
26 response to this regulation.

27 ¹³ The challenge to section 5472, subdivision (f) fails for lack of standing. This regulation
28 requires that a registered weapon “have a serial number applied pursuant to federal law,” and thus
affects persons wanting to register bullet-button assault weapons that were manufactured prior to
the enactment of federal serialization requirements 1968. None of the named Petitioners are
alleged to possess such a weapon. (See *League of California Cities v. Superior Court* (2015) 241
Cal.App.4th 976, 985 [“Writ relief is not available if the petitioner gains no direct benefit from
the writ’s issuance, or suffers no direct detriment from its denial.”].)

1 serial numbers applied by federally-licensed manufacturers, another owner may assign another
2 weapon the same identifier.

3 Petitioners contend that because another statute requires serial numbers for homebuilt
4 weapons, and applies after the bullet-button registration period closes, DOJ cannot impose such a
5 requirement in the bullet-button registration process.¹⁴ But DOJ's authority to promulgate
6 regulations for the bullet-button registration process is not limited by authority given in another
7 statute. (See *Ralphs Grocery Co. v. Reimel* (1968) 69 Cal.2d 172, 182-183 [upholding agency's
8 regulation of quantity discounts for beer even though separate statute governed quantity discounts
9 on milk and wine].) Rather, DOJ has authority to promulgate any and all regulations that do not
10 conflict with the authorizing statute, and that are reasonably necessary to effectuate the statutory
11 purpose. (*Jones, supra*, 2 Cal.5th at p. 398.) The serial number regulations satisfy both
12 requirements.

13 **E. Non-Liability Clause for Terms of Use**

14 Petitioners object to the regulation establishing a non-liability clause as part of the terms of
15 use for the mandatory electronic registration system (§ 5473, subd. (b)(1)), arguing that it is
16 unrelated to registration and in conflict with the California Constitution and the Information
17 Practices Act. But the non-liability clause applies “[e]xcept as may be required by law,” which
18 means that it applies only to the extent possible under other applicable laws. The regulation
19 allows DOJ to provide public access to the statutorily mandated electronic registration system
20 without undue legal risk. It is therefore reasonably necessary for the registration process.

21 **F. Required Registration Information**

22 Petitioners' challenge to the requirement that applicants provide “U.S. citizenship status,
23 place of birth, country of citizenship, and alien registration number” (§ 5474, subd. (a)) fails
24 because there is no merit to Petitioners' contention that regulations may only repeat the
25 authorizing statute. (See *Jones, supra*, 2 Cal.5th at p. 398.) DOJ is required to confirm that

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27 ¹⁴ Penal Code section 29180 requires DOJ-issued serial numbers for (1) the manufacture of
28 homemade firearms as of July 1, 2018, and (2) pre-existing homemade firearms by January 1,
2019.

1 applicants are not prohibited from possessing a firearm, prior to registration. (Pen. Code,
2 § 30950.) Citizenship information is required to confirm eligibility to possess a firearm under
3 federal law, in accordance with 18 U.S.C. § 922(g)(5).¹⁵ The regulation is thus reasonably
4 necessary to carry out the registration in accordance with the assault weapons law.

5 Petitioners also challenge the requirement for “clear digital photographs” (§ 5474, subd.
6 (c))¹⁶ based on a statutory reference to a “description” rather than a “depiction” of the firearm
7 (Pen. Code, § 30900, subd. (b)). But “[a]n administrative agency is not limited to the exact
8 provisions of a statute in adopting regulations to enforce its mandate.” (*PaintCare, supra*, 233
9 Cal.App.4th at pp. 1298-1299.) Clear digital photos help to uniquely identify the weapon, as
10 required by statute, and allow DOJ to confirm that the weapon was accurately described in the
11 application and is eligible for registration (e.g., whether it has a bullet button). The regulation is
12 thus reasonably necessary for the registration process.

13 **G. Joint Registration Requirements**

14 Penal Code section 30955 provides for joint registration of assault weapons “owned by
15 family members residing in the same household.” Petitioners challenge the regulation setting
16 forth the family relationships that qualify for joint registration (§ 5474.1, subd. (b)), complaining
17 that DOJ does not permit joint registration based on every conceivable family relationship. But
18 nothing in the assault weapons law requires DOJ to recognize certain or all family relationships
19 for joint registration, and it is well within DOJ’s delegated rulemaking authority to define “family
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24 ¹⁵ This provision prohibits the possession of firearms by aliens illegally or unlawfully in the
United States or admitted under a nonimmigrant visa.

25 ¹⁶ Petitioners have not provided substantive briefing on, and have thus waived, their challenge to
26 a similar requirement that a person seeking to de-register a weapon submit “one or more
27 photographs clearly depicting the firearm.” (§ 5478, subd. (a)(2); see Petition, Causes of Action
28 11 & 12.) This challenge also would fail on the merits for the same reasons that the challenge to
section 5474, subdivision (c) fails.

1 members” for the purposes of this registration process.¹⁷ Indeed, other state agencies have
2 promulgated various definitions of “family member” in various contexts.¹⁸

3 Petitioners also contend that because the assault weapons law provides for joint registration
4 in another statute (Pen. Code, § 30955) separate from the registration requirement (*id.* § 30900,
5 subd. (b)(1)), DOJ has no authority to promulgate the joint registration regulation. This is
6 without merit because DOJ has the authority to issue rules preventing the statutorily required joint
7 registration option from being misused during this registration process, as part of its authority to
8 administer the registration process. (See *Jones, supra*, 2 Cal.5th at p. 391.)

9 The challenge to the proof-of-address regulation (§ 5474.1, subd. (c)) is similarly
10 unfounded. DOJ is not precluded from requiring proof-of-address, even if it is not explicitly
11 required by statute. “[T]he Legislature may . . . choose to grant an administrative agency broad
12 authority to apply its expertise in determining whether and how to address a problem without
13 identifying specific examples of the problem or articulating possible solutions.” (*Jones, supra*, 2
14 Cal.5th at p. 399, citation omitted.) A regulation specifying sufficient forms of proof of address
15 is reasonably necessary to prevent abuse of the joint registration option by persons who do not
16 actually reside at the same address.

17 **H. Prohibition on Modification of the Magazine Release Device**

18 Petitioners have not briefed their challenge to the regulation prohibiting post-registration
19 modification of the magazine release device. (§ 5477; Petition, Causes of Action 15 & 16). This
20 challenge has thus been waived, and in any event would fail on the merits. The regulation helps
21 to prevent the registration process from being used to circumvent longstanding restrictions on the
22 sale, possession, and manufacture of weapons that have previously been classified as assault
23 weapons. Removal of the bullet button creates a registered weapon that should not have been

24 ¹⁷ Petitioners claim that DOJ previously attempted to limit the scope of joint registration.
25 (Opening Br. at 16.) This refers to rulemaking for a prior registration cycle, in 2000, which has
no relevance to this rulemaking.

26 ¹⁸ See Cal. Code Regs., tit. 22, § 10005 [Department of Health Services definition applicable to
27 “Displaced Homemakers Program”]; Cal. Code Regs., tit. 23, § 2814.20 [State Water Resources
28 Control Board definition applicable to “Underground Storage Tank Petroleum Contamination
Orphan Site Cleanup Fund”]; Cal. Code Regs., tit. 25, § 12002, subd. (o) [California Housing
Finance Agency definition in the context of “Restrictions on Agency Public Benefits to Aliens”].

1 registered. It also transforms the weapon into a true quick-release weapon, with “the capacity to
2 accept a detachable magazine,” as previously defined under the assault weapons law, potentially
3 placing it into the category of assault weapons originally subject to restrictions on sale and
4 possession as of January 1, 2000, which to be grandfathered, would have had to have been
5 registered by January 1, 2001.¹⁹ The regulation is thus related to and reasonably necessary for the
6 registration process.

7 CONCLUSION

8 For the foregoing reasons, the petition should be dismissed and judgment entered in favor
9 of Respondents.

10 Dated: April 6, 2018

Respectfully Submitted,

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19 *Department of Justice*

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27 ¹⁹ See former Penal Code §§ 12276.1 (2000) [introduction of feature-based definitions of assault
28 weapon, effective January 1, 2000], 12285, subd. (a) (2000) [requiring registration of assault
weapons as defined under former section 12276.1 within one year].

DECLARATION OF SERVICE

Case Name: **Villanueva, Danny, et al. v. Xavier Becerra, et al.**

No.: **17CECG03093**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. My business address is 455 Golden Gate Avenue, San Francisco, CA 94102.

On April 6, 2018, I served the attached **OPPOSITION TO VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** by transmitting a true copy via electronic mail through Odyssey EfileCA, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 6, 2018, at San Francisco, California.

Susan Chiang

Declarant



Signature