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10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
12  
13

14 **Kim Rhode et al.,**

15 Plaintiffs,  
16

17 **v.**

18 **Xavier Becerra, in his official capacity**  
19 **as Attorney General of the State of**  
**California, et al.,**

20 Defendants.  
21  
22

3:18-cv-00802-BEN-JLB

**SECOND SUPPLEMENTAL  
DECLARATION OF MAYRA G.  
MORALES IN SUPPORT OF  
DEFENDANT XAVIER  
BECERRA'S OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

Dept: 5A  
Judge: Hon. Roger T. Benitez  
Action Filed: 4/27/2018  
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**SECOND SUPPLEMENTAL DECLARATION OF MAYRA G. MORALES**

I, MAYRA G. MORALES, declare:

1. I am a Staff Services Manager III for the California Department of Justice, Bureau of Firearms (hereafter generally referred to together as the “Department”). I make this declaration of my own personal knowledge and experience and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

2. I understand that at an October 1, 2019 status conference relating to Plaintiffs’ motion for preliminary injunction, the Court requested additional information from the Attorney General. I have reviewed pages 41 through 43 of the transcript of the status conference. Based on that review, I see that the Court requested the same information provided in my September 27 Supplemental Declaration (Supp. Decl.), ECF No. 42, updated through the end of October of 2019.

3. As part of my job duties, I can request data from the Department’s Application Development Bureau regarding ammunition eligibility transactions. I have obtained the data that the Court requested.

4. This declaration updates the tables in my September 27 Supplemental Declaration for July and August and adds information for September and October. To aid in readability, the tables are presented following my signature.

5. Section I of this declaration provides a narrative summary of the information on Basic Ammunition Eligibility Check (which I will refer to as “Basic Checks”) from July 1, 2019, through October 31, 2019. The data underlying this summary appears in Tables 1.1 through 1.3.

6. Section II provides a narrative summary of information on AFS Checks for July 1, 2019, through October 31, 2019. The data underlying this summary appears in Tables 2.1 through 2.3.

1           7. Section III of this declaration updates information about purchasers who  
2 had been denied as prohibited, but who, upon additional review, were determined to  
3 be not prohibited. The Department has now reviewed a majority of the 504  
4 transactions where a purchaser was denied as prohibited, and it has determined that  
5 13 of those purchasers were in fact eligible.

6 **I. BASIC AMMUNITION ELIGIBILITY CHECK INFORMATION FOR JULY**  
7 **THROUGH OCTOBER 2019**

8           8. The Basic Check is described in California Code of Regulations, title 11,  
9 section 4303. This check can be used irrespective of whether a purchaser or  
10 transferee (I will generally refer to these together as “purchaser”) can take  
11 advantage of one of the other eligibility checks.

12           9. Under section 4303(b), a Basic Check costs \$19 and entails submitting  
13 identifying information, including the purchaser’s name, date of birth, current  
14 address, and ID number, to the Department’s Dealer Record of Sale (DROS) Entry  
15 System (DES). The process proceeds in two steps. First, the Department  
16 automatically checks the person’s ID or driver license number (I will generally  
17 refer to IDs and driver licenses as “IDs”), name, and date of birth, against DMV  
18 records to confirm the information submitted matches a DMV record and that the  
19 ID is valid. If the information matches, then the submitted information is  
20 automatically run through four state databases: (1) Automated Criminal History  
21 Record System (ACHS); (2) Mental Health Firearms Prohibition System (MHFPS);  
22 (3) California Restraining and Protective Order System (CARPOS); and (4) Wanted  
23 Persons System (WPS).

24           10. If a purchaser’s information results in no hits in the system, the Basic  
25 Check is processed automatically, meaning that Department employees are not  
26 directly involved in the process. If the purchaser’s information results in a hit in  
27 one of the four systems, the eligibility check will require manual review by a  
28 Department analyst. A manual review can take anywhere from a few minutes to

1 days or weeks depending on the nature of the hit in the database. For instance, if  
2 the ACHS shows the purchaser was charged with a felony, but does not have a  
3 disposition of that felony, the manual check would entail tracking down the  
4 disposition, which can take at least several business days.

5 11. Table 1.1 lists the Basic Check approvals, rejections, and denials for July  
6 1, 2019, through October 31, 2019.

7 12. From July 1, 2019, through October 31, 2019, the Department has  
8 processed 14,331 Basic Checks. Of those, 95% have been approved and about  
9 1.65% have been rejected because the purchaser's information does not match  
10 Department of Motor Vehicle records or the records used to make a determination  
11 were incomplete, thereby preventing Department analysts from ascertaining  
12 whether the purchaser was prohibited.

13 13. Almost 400 people, or 2.8% of the total processed, have been denied  
14 because the Department's records show them to be prohibited persons.

15 14. Table 1.2 sets forth the average processing times for Basic Checks that  
16 were submitted in July through October that had eligibility determinations made on  
17 or before October 31, 2019. The average processing times for July and August  
18 have increased since my September 27 Supplemental Declaration because a small  
19 number of transactions—6.9% of the total—were still pending on August 31, but  
20 had been resolved by October 31. These longer transaction times affected the  
21 averages for those months. A Basic Check can be delayed for many reasons, most  
22 often it is because a Department analyst must conduct additional research on an  
23 arrest cycle for a prohibiting event with missing disposition. The Department will  
24 do its due diligence to obtain the necessary information. However, if the  
25 Department is unable to obtain the information, it will ultimately reject the  
26 transaction because an eligibility determination could not be made.

27 15. For the typical purchaser, the Basic Check processing time takes an  
28 average of one to two days. In July, it took 1 day and 17.5 hours for the typical

1 purchaser (though, as discussed in the footnotes to Tables 1.2 and 1.3, the average  
2 time is higher). By October, the processing time had decreased to 1 day and 4  
3 hours.

4 16. Table 1.3 lists the average processing times for Basic Checks that were  
5 manually and automatically approved for the months of July through October.  
6 These numbers are a subset of the Basic Checks that were submitted during those  
7 months and that had eligibility determinations made on or before October 31, 2019.

8 17. Just under one-quarter of the approved Basic Checks were processed  
9 automatically. The average processing time across all four months was roughly 2  
10 hours.

11 18. Just over three-quarters of the approved Basic Checks were processed  
12 manually. Subject to the observation above that some outliers affected the average,  
13 the typical approved Basic Check that is manually processed takes about two  
14 business days.

## 15 **II. AFS CHECK (STANDARD AMMUNITION ELIGIBILITY CHECK)** 16 **INFORMATION FOR JULY THROUGH OCTOBER 2019**

17 19. This section of my declaration provides the information that the  
18 Department has collected as of October 31, 2019, regarding AFS Check rejections.  
19 The AFS Check is described in more detail in my September 27 Supplemental  
20 Declaration. Suppl. Decl. ¶¶ 19-25, 28-31, ECF No. 42. The regulation outlining  
21 the AFS Check is located in California Code of Regulations, title 11, section 4302.

22 20. Section II.A of this declaration provides the data on AFS Checks for July  
23 1, 2019, through October 31, 2019. Section II.B sets forth the reasons for AFS  
24 Check rejections in those months. Section II.C provides information on purchasers  
25 who were rejected in an AFS Check, but who later purchased ammunition on or  
26 before October 31, 2019.

**A. AFS Check Approvals, Denials, and Rejections for July Through October 2019**

21. Table 2.1 sets forth the AFS Check approvals, denials, and rejections for July 1, 2019 through October 31, 2019. As noted in September 27 Supplemental Declaration, Suppl. Decl. ¶ 27, ECF No. 42, denials occur when official records identify the purchaser as a prohibited person who cannot lawfully possess a firearm or ammunition. Rejections occur when the purchaser's information does not match an AFS record.

22. Since July 1, 2019, the Department has processed 345,547 AFS Checks. It has approved 283,411 (82%), rejected 62,035 (18%) because the information submitted by the purchaser does not match an AFS entry, and denied 101 (0.03%) because the Department's information shows the purchaser to be on the Armed Prohibited Persons System (APPS) list.

23. The monthly rate of AFS Check rejections was 18.8% in July, increased to 20% in August, and has since decreased to 17% in September and 15.6% in October. The Department expects this downward trend to continue as familiarity with the system among ammunition vendors and consumers increases. The reasons for the rejections in July through October 2019 are set forth in more detail in the following section.

**B. Information on AFS Check Rejections for July Through October 2019**

24. To recap from my September 27 Supplemental Declaration, AFS Checks are a streamlined eligibility check that rely on the purchaser already having undergone a firearms background check and being subject to inclusion in APPS, in the event they later become prohibited. By definition, an AFS Check will work only for those who have an AFS record, and whose record is up to date. A purchaser without an AFS record, or with an AFS record that is not current, will not

1 be able to obtain an eligibility determination; the system will reject that submission.  
2 Suppl. Decl. ¶¶ 28, ECF No. 42.

3 25. At the outset, it bears noting that an AFS Check rejection, due to the  
4 purchaser's information not matching a record in AFS, is not a determination that  
5 the purchaser is ineligible to purchase ammunition. It means that the purchaser  
6 cannot avail themselves of that streamlined eligibility check. They may still use a  
7 Basic Check, or, in certain situations, a Certificate of Eligibility Verification  
8 (California Code of Regulations, title 11, section 4305) or Firearms Eligibility  
9 Check (California Code of Regulations, title 11, section 4304). *See also* Suppl.  
10 Decl. ¶¶ 21-25, ECF No. 42.

11 26. An AFS Check will be rejected if the purchaser's name, address, date of  
12 birth, or ID number, or some combination of that information, does not match an  
13 AFS record. Suppl. Decl. ¶ 30, ECF No. 42.

14 27. Table 2.2 summarizes the reasons for the AFS Check rejections for July  
15 1, 2019 through October 31, 2019.

16 28. Across all four months, the most common reason AFS Checks were  
17 rejected was that the purchaser's address did not match the address in an AFS  
18 record. These purchasers' name, ID number, and date of birth matched an entry,  
19 but their address did not match an entry. This accounted for about 36% of the  
20 rejections over the four-month period.

21 29. The next most common reason AFS Checks were rejected was that the  
22 purchaser could not be associated with an AFS entry at all. In most cases, this  
23 likely occurred because either the purchaser or the ammunition vendor mistakenly  
24 chose to run an AFS Check where the purchaser did not have an AFS record. This  
25 accounted for roughly one-third of all AFS Check rejections. For instance, in  
26 October, the Department rejected 4,288 AFS Checks, about 32% of all 13,498  
27 rejections, for this reason.  
28



30. Name mismatches were another significant source of rejections. Across the four months, about 13% of AFS Checks were rejected for this reason.

31. These three reasons for rejections—address mismatches, no apparent AFS entry, and name mismatches—accounted for about 80% of all rejections. The remaining 20% or so of rejections occurred for various other reasons listed in Table 2.2.

**C. Information on Purchasers Rejected in an AFS Check Who Later Purchased Ammunition on or before October 31, 2019**

32. At the Court's request, my September 27 Supplemental Declaration included information on whether purchasers who were rejected in an AFS Check had subsequently purchased ammunition. Suppl. Decl. ¶¶ 36-39, ECF No. 42.

33. Table 2.3 lists information on purchasers who were rejected who later purchased ammunition by month.

34. As explained in my September 27 Supplemental Declaration, there is a difference between the total number of rejections each month and the unique individuals rejected. Suppl. Decl. ¶ 38, ECF No. 42. I understand that the primary difference between rejections and denials and unique ID numbers is largely because some individual purchasers attempted to use the AFS Check procedure more than once and were rejected or denied on more than one occasion.

35. In my September 27 Supplemental Declaration, I reported that of the 9,027 unique purchasers rejected in July, 3,468 (38.41%) had purchased ammunition as of August 31, 2019. Suppl. Decl. ¶ 39, Table 2.3, ECF No. 42. By October 31, 2019, 3,950 (43.75%) unique purchasers in July had purchased ammunition as of October 31, 2019. That means that 482 additional people who had an AFS Check rejected in July purchased ammunition between August 31, 2019, and October 31, 2019.

36. A similar trend occurred for the August numbers. In my September 27 Supplemental Declaration, I reported that of the 16,037 unique purchasers rejected



1 in August, 4,923 (30.69%) had purchased ammunition as of August 31, 2019.  
2 Suppl. Decl. ¶ 39, Table 2.3, ECF No. 42. By October 31, 2019, that number had  
3 increased to 6,563 (40.92%), meaning an additional 1,640 people who had an AFS  
4 Check rejected in August purchased ammunition between August 31, 2019, and  
5 October 31, 2019.

6 37. Of the 14,008 individuals who had an AFS Check rejected in September,  
7 5,371 (38.34%) had purchased ammunition by October 31, 2019.

8 38. And of the 10,896 individuals who had an AFS Check rejected in  
9 October, 3,580 (32.86%) had purchased ammunition by October 31, 2019.

10 **III. PERSONS PREVENTED FROM PURCHASING AMMUNITION AND**  
11 **SUBSEQUENTLY DEEMED ELIGIBLE.**

12 39. In my September 27 Supplemental Declaration, I provided information in  
13 response to the Court's inquiry about purchasers who had been denied approval to  
14 purchase ammunition because they were prohibited, but who were later determined  
15 to not be prohibited. Suppl. Decl. ¶ 40, ECF No. 42.

16 40. I reported that four purchasers were denied on the grounds of a  
17 prohibiting offense, mental health commitment, or restraining order, but were  
18 subsequently determined to have been eligible to purchase ammunition at the time  
19 of purchase, and that an additional five purchasers were ineligible to purchase  
20 ammunition on the face of their official records, but were later determined to be  
21 eligible after Department staff investigated the matter. Suppl. Decl. ¶ 45, ECF  
22 No. 42.

23 41. The Department has now reviewed over 400 of the transactions where the  
24 purchaser was denied as prohibited. Based on that review, one additional  
25 purchaser, for a total of five purchasers, was denied on the grounds of a prohibiting  
26 offense, mental health commitment, or restraining order, but was, based on the face  
27 of the official records, subsequently determined to have been eligible to purchase  
28 ammunition at the time of purchase. Three new transactions were uncovered where

1 the purchaser was ineligible to purchase ammunition on the face of their official  
2 records, but were later determined to be eligible after Department staff investigated  
3 the matter. The number of those transactions stands at eight.

4 42. To summarize, with over three-quarters of the denials from July 1, 2019,  
5 through October 31, 2019, reviewed, 13 purchasers who were denied as prohibited  
6 persons have since been determined to be eligible.

7  
8  
9 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing  
10 is true and correct.

11  
12 Executed on: November 18, 2019

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15 MAYRA G. MORALES  
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**TABLE 1 – Basic Ammunition Eligibility Checks**

**TABLE 1 – BASIC AMMUNITION ELIGIBILITY CHECKS**

**TABLE 1 – Basic Ammunition Eligibility Checks**

<b>Table 1.1: Basic Checks — Approvals, Denials, &amp; Rejections</b>					
	<b>July 2019</b>	<b>August 2019</b>	<b>September 2019</b>	<b>October 2019</b>	<b>Total</b>
Basic Checks Received	3,798	5,066	3,213	2,400 <sup>1</sup>	14,477
Basic Checks Processed	3,798	5,066	3,201	2,266	14,331
Approved <sup>2</sup>	3,607 (94.97%)	4,852 (95.78%)	3050 (95.28%)	2,189 (96.60%)	13,698 (95.58%)
Denied (Prohibited Persons)	119 (3.13%)	130 (2.57%)	87 (2.72%)	60 (2.65%)	396 (2.76%)
Rejected (no match with DMV records)	22 (0.58%)	17 (0.34%)	24 (0.75%)	10 (0.44%)	73 (0.51%)
Rejected (incomplete history)	50 (1.32%)	67 (1.32%)	40 (1.25%)	7 (0.31%)	164 (1.14%)

<sup>1</sup> As of November 1, 2019, 12 (0.37%) Basic Checks received in September and 65 (2.71%) Basic Checks received in October, had been delayed. In addition, 69 (2.88%) Basic Checks received in October had not yet been processed as of November 1, 2019. For example, requests received on October 31, 2019, likely would not have been processed by the time I collected data for this declaration.

<sup>2</sup> Transactions that were initially denied, but later approved, are treated as approved for purposes of this table.

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**TABLE 1 – Basic Ammunition Eligibility Checks**

Table 1.2: Basic Checks — Processing Times				
	July 2019	August 2019	September 2019	October 2019
Average Time <sup>3</sup>	3 days, 1 hr., 30 mins.	2 days, 7 hrs., 59 mins.	1 day, 10 hrs., 2 mins.	1 day, 4 hrs., 45 mins.

<b>Table 1.3: Approved Basic Checks — Processing Times</b>				
	<b>July 2019</b>	<b>August 2019</b>	<b>September 2019</b>	<b>October 2019</b>
Automatically Processed	811 (22.48%)	1,092 (22.51%)	713 (23.38%)	558 (25.49%)
Average Time	2 hrs., 5 mins.	1 hr., 40 mins.	2 hrs., 36 mins	1 hr., 59 mins.
Manually Processed	2,796 (77.52%)	3,760 (77.49%)	2,337 (76.62%)	1,631 (74.51%)
Average Time <sup>4</sup>	2 days, 12 hrs. 29 mins.	2 days, 4 hrs., 3 mins.	1 day, 4 hrs., 25 mins.	1 day, 12 hrs., 2 mins.

<sup>3</sup> My September 27 Supplemental Declaration used August 31, 2019, as a cut-off for calculating transaction times. *See* Suppl. Decl. ¶ 16, ECF No. 42. Not all July and August 2019 Basic Checks had determinations made by that date. When I had the calculation re-run as of October 31, 2019, all July and August Basic Checks were considered, as they all had determinations made. The longer total processing times for July and August reported in this declaration are a result of a relatively small number of transactions significantly increasing the average. Based on the times reported in my September 27 Supplemental Declaration, the typical Basic Check that required manual processing took 1 day, 17 hours, and 31 minutes, in August, and 1 day, 4 hours, and 50 minutes, in July. *See* Suppl. Decl. at p. 4, Table 1.2, ECF No. 42.

<sup>4</sup> For the reasons discussed in footnote 3, the average times for July and August have increased compared with the numbers reported in my September 27 Supplemental Declaration. *See* Suppl. Decl. at p. 4, Table 1.3, ECF No. 42.

**TABLE 2 – AFS Checks (Standard Ammunition Eligibility Checks)**

**TABLE 2 – AFS CHECKS (STANDARD AMMUNITION ELIGIBILITY CHECKS)**

**TABLE 2 – AFS Checks (Standard Ammunition Eligibility Checks)**

<b>Table 2.1: AFS Checks — Approvals, Denials, &amp; Rejections</b>					
	<b>July 2019</b>	<b>August 2019</b>	<b>September 2019</b>	<b>October 2019</b>	<b>Total</b>
AFS Checks Processed	57,553	101,058	100,560	86,376	345,547
Approved	46,702	80,811	83,051	72,847	283,411
Denied (Prohibited Persons)	14	28	28	31	101
Rejected (no match with AFS records)	10,837	20,247	17,481	13,498	62,063



**TABLE 2 – AFS Checks (Standard Ammunition Eligibility Checks)**

<b>Table 2.2: AFS Checks — Reasons for Rejections</b>								
	July 2019		August 2019		September 2019		October 2019	
<b>Total Rejected</b>	10,837		20,219		17,481		13,498	
<b>Address Mismatch (name, date of birth, and ID number match)</b>	4,077	37.62%	7,160	35.41%	6,420	36.73%	4,925	36.49%
<b>No Identifiable AFS Entry (purchaser not eligible for AFS Check)</b>	3,303	30.48%	6,563	32.46%	5,609	32.09%	4,288	31.77%
<b>Name Mismatch (date of birth, address, and ID number match)</b>	1,452	13.40%	2,563	12.68%	2,197	12.57%	1,744	12.92%
<b>Name and ID Number Mismatch (date of birth and address match)</b>	423	3.90%	774	3.83%	689	3.94%	510	3.78%
<b>AFS Entry No Longer Valid (Name, Date of Birth, ID Number, and Address Match)</b>	322	3%	576	2.85%	443	2.53%	361	2.67%
<b>Name and Address Mismatch (date of</b>	301	2.78%	671	3.32%	666	3.81%	524	3.88%

**TABLE 2 – AFS Checks (Standard Ammunition Eligibility Checks)**

<b>Table 2.2: AFS Checks — Reasons for Rejections</b>							
	July 2019		August 2019		September 2019		October 2019
<b>birth and ID number match)</b>							
<b>AFS Entry No Longer Valid (Partially Matched on a combination of Name, Date of Birth, ID, Address)</b>	258	2.38%	522	2.58%	425	2.43%	333 2.47%
<b>ID Number and Address Mismatch (name and date of birth match)</b>	248	2.29%	497	2.46%	392	2.24%	298 2.21%
<b>ID Number Mismatch (name, date of birth, and address match)</b>	209	1.93%	383	1.89%	290	1.66%	226 1.67%
<b>Date of Birth Mismatch (name, address, and ID number match)</b>	148	1.37%	259	1.28%	188	1.08%	154 1.14%
<b>Date of Birth and ID Number Mismatch</b>	41	0.38%	124	0.61%	66	0.38%	65 0.48%

**TABLE 2 – AFS Checks (Standard Ammunition Eligibility Checks)**

<b>Table 2.2: AFS Checks — Reasons for Rejections</b>							
	July 2019		August 2019		September 2019		October 2019
(name and address match)							
Date of Birth and Address Mismatch (name and ID number match)	34	0.31%	72	0.36%	49	0.28%	45 0.33%
Name and Date of Birth Mismatch (address and ID number match)	16	0.15%	28	0.14%	19	0.11%	18 0.13%
Name, Date of Birth, and Address Mismatch (ID number match)	5	0.05%	27	0.13%	28	0.16%	7 0.05%

**TABLE 2 – AFS Checks (Standard Ammunition Eligibility Checks)**

<b>Table 2.3: Purchasers Who were Rejected on an AFS Check and Subsequently Purchased Ammunition on or before August 31, 2019</b>				
	<b>July 2019</b>	<b>August 2019</b>	<b>September 2019</b>	<b>October 2019</b>
<b>Individuals Rejected in AFS Checks</b>	9,027	16,037	14,008	10,896
<b>Number Who Purchased Ammunition on or before October 31, 2019, after an AFS Check Rejection</b>	3,950 <sup>5</sup>	6,563 <sup>6</sup>	5,371	3,580

<sup>5</sup> As of August 31, 2019, this number was 3,468. *See* Supp. Decl. at p. 11, Table 2.3, ECF No. 42. The difference between that number and the number in this table means that 482 additional people who received an AFS Check rejection in the month of July were able to purchase ammunition using some form of eligibility check between August 31 and October 31, 2019.

<sup>6</sup> As of August 31, 2019, this number was 4,923. *See* Supp. Decl. at p. 11, Table 2.3, ECF No. 42. The difference between that number and the number in this table means that 1,640 additional people who received an AFS Check rejection in the month of August were able to purchase ammunition using some form of eligibility check between August 31 and October 31, 2019.

## CERTIFICATE OF SERVICE

Case Name: **Rhode v. Becerra** No. 3:18-cv-00802-BEN-JLB

I hereby certify that on November 18, 2019, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**SECOND SUPPLEMENTAL DECLARATION OF MAYRA G. MORALES IN SUPPORT OF DEFENDANT XAVIER BECERRA'S OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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 November 18, 2019, at Sacramento, California.

Nelson Richards

Declarant

/s/ Nelson Richards

Signature