



455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO, CA 94102-7004

Public: (415) 510-4400
Telephone: (415) 510-3817
Facsimile: (415) 703-1234
E-Mail: Patty.Li@doj.ca.gov

February 3, 2021

VIA TRUEFILING

Hon. Brad R. Hill, Presiding Justice
Hon. M. Bruce Smith, Associate Justice
Hon. Thomas DeSantos, Associate Justice
Court of Appeal, Fifth Appellate District
2424 Ventura Street
Fresno, CA 93721

RE: *Villanueva v. Becerra*, Court of Appeal, Fifth Appellate District, Case No. F078062

Dear Presiding Justice Hill and Associate Justices Smith and DeSantos:

On January 14, 2021, this Court issued an unpublished opinion affirming the trial court's rejection of a challenge by gun owners to regulations governing the registration of what are commonly known as "bullet-button" assault weapons. In accordance with rule 8.1120 of the California Rules of Court, Defendants and Respondents Xavier Becerra, Luis Lopez, and the California Department of Justice ("DOJ") respectfully request publication of the opinion.

This Court's opinion meets the standards for publication set forth in rule 8.1105(c)(2), (3), (4), and (6). Subdivision (c)(2) allows for publication if a decision "[a]pples an existing rule of law to a set of facts significantly different from those stated in published opinions." (Cal. Rules of Court, rule 8.1105(c)(2).) This Court's discussion of DOJ's registration regulations meets this criterion, for several reasons. First, the decision explains how to determine that an agency has acted within the scope of its rulemaking authority when the agency invokes a statutory exemption from the Administrative Procedure Act ("APA"). (Slip Op. at pp. 14-29.) The Legislature has occasionally authorized DOJ (and other agencies) to undertake APA-exempt rulemaking when addressing complex, but time-sensitive, matters, such as the registration requirement at issue here. However, there do not appear to be any published decisions directly addressing the use of such an exemption.

Second, although there are published decisions discussing agency rulemaking and explaining that an agency's rulemaking authority is not strictly limited by the plain language of the authorizing statute, there are very few published decisions applying these principles in the context of firearms regulations. In particular, the Court's determination that DOJ's rulemaking authority for the registration process permitted it to define statutory terms that are contained in a separate section from the registration requirement—but that are essential for understanding what

weapons may be registered—will be relevant to other firearms regulations. (Slip Op. at pp. 23-24.) This is because the Penal Code contains numerous internal cross-references, often incorporating material from one section in a separately numbered section, such that regulations implementing a particular section must necessarily address topics covered in a separate statutory provision. There does not appear to be any published authority specifically discussing agency rulemaking authority in the context of this type of statutory scheme. The Court’s discussion of these issues also makes publication appropriate under subdivision (c)(3), which applies when a decision “explains . . . with reasons given, an existing rule of law.” (Cal. Rules of Court, rule 8.1105(c)(3).)

Publication is also warranted under subdivision (c)(4), because the opinion “[a]dvances a new interpretation, clarification, criticism, or construction” of a Penal Code provision. (Cal. Rules of Court, rule 8.1105(c)(4).) Specifically, the Court’s rejection of the challenge to the regulation prohibiting post-registration modification of the bullet-buttons on registered weapons clarifies an important feature of the registration process: because the registration period is limited to weapons with particular features, a regulation prohibiting post-registration alterations to those qualifying features is consistent with the registration requirement. (Slip Op. at pp. 28-29.)

Finally, publication is appropriate under subdivision (c)(6) because this case “[i]nvolves a legal issue of continuing public interest.” (Cal. Rules of Court, rule 8.1105(c)(6).) DOJ frequently promulgates regulations, usually through notice-and-comment rulemaking. This decision will provide important guidance for DOJ, as well as for persons or entities subject to DOJ’s regulations, particularly in the firearms context. This Court’s analysis of rulemaking in accordance with a statutory exemption from the APA will also be relevant to future such rulemakings, whether by DOJ or by other agencies. (Slip Opinion, at pp. 14-29.)

For the foregoing reasons, Defendants and Respondents respectfully request that the Court publish its decision.

Respectfully submitted,

/s/ P. Patty Li

P. PATTY LI

Deputy Attorney General

For XAVIER BECERRA
Attorney General

DECLARATION OF SERVICE

Case Name: ***Villanueva, Danny, et al. v. Xavier Becerra, et al.***
Case No.: **F078062**

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 collecting and processing electronic and physical correspondence.

On February 3, 2021, I electronically served the attached

- **LETTER TO THE COURT REQUESTING PUBLICATION**

by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on February 3, 2021, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Sean A. Brady Anna M. Bavir C.D. Michel MICHEL & ASSOCIATES, P.C. Email: sbrady@michellawyers.com abarvir@michellawyers.com cmichel@michellawyers.com [Via TrueFiling]	Fresno County Superior Court Court Clerk Civil Division 1130 O Street Fresno, CA 93721-2220 [Via USPS Mail]
---	--

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 February 3, 2021, at San Francisco, California.

M. Mendiola

Declarant



Signature