FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KELLY ANN CHAKOV MCDOUGALL, an individual and Trustee; JULIANA GARCIA, an individual; SECOND AMENDMENT FOUNDATION; CALIFORNIA GUN RIGHTS FOUNDATION; FIREARMS POLICY COALITION, INC., *Plaintiffs-Appellants*, v. COUNTY OF VENTURA; BILL AYUB; WILLIAM T. FOLEY; ROBERT LEVIN; VENTURA COUNTY PUBLIC HEALTH CARE AGENCY, *Defendants-Appellees.*	No. 20-56220 D.C. No. 2:20-cv-02927-CBM-AS OPINION

Appeal from the United States District Court
for the Central District of California
Consuelo B. Marshall, District Judge, Presiding

Argued and Submitted October 18, 2021
Pasadena, California

Filed January 20, 2022

Before: Andrew J. Kleinfeld, Ryan D. Nelson, and Lawrence VanDyke, Circuit Judges.

Opinion by Judge VanDyke;
Concurrence by Judge Kleinfeld;
Concurrence by Judge VanDyke

SUMMARY*

Second Amendment

The panel reversed the district court's order dismissing, for failure to state a claim, an action alleging that Ventura County's COVID-19 public health orders mandating a 48-day closure of gun shops, ammunition shops, and firing ranges violated plaintiffs' Second Amendment rights.

The panel first held that the Orders' 48-day closure of gun shops, ammunition shops, and firing ranges burdened conduct protected by the Second Amendment, based on a historical understanding of the scope of the Second Amendment right.

In assessing the appropriate level of scrutiny, the panel held that the district court erred by determining that *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), applied to Appellees' Second Amendment claim. The panel held that *Jacobson,* which addressed a substantive due process challenge to a state statute requiring smallpox vaccinations, did not apply here because *Jacobson* did not concern the specific, constitutionally enumerated right at issue, and essentially applied rational basis review. The panel declined to determine whether the Orders were categorically

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

unconstitutional and instead, because the Orders failed to satisfy any level of heightened scrutiny, based its decision on the traditional tiered scrutiny analysis.

The panel held that the Orders' burden on the core of the Second Amendment warranted strict scrutiny—which the Orders failed to satisfy because they were not the least restrictive means to further Appellees' interest, especially when compared to businesses that had no bearing on fundamental rights, yet nevertheless were allowed to remain open. The panel distinguished this case from *Silvester v. Harris*, 843 F.3d 816 (9th Cir. 2016), which applied intermediate scrutiny in assessing California's 10-day waiting period between purchase and possession of a firearm. The panel held that the Orders at issue here imposed a far greater burden than the 10-day delay at issue in *Silvester*.

The panel held that the Orders also failed intermediate scrutiny given that the County failed to provide any evidence or explanation suggesting that gun shops, ammunition shops, and firing ranges posed a greater risk of spreading COVID-19 than other businesses and activities deemed "essential." Nor did Appellees provide any evidence that they considered less restrictive alternatives for the general public. This could not survive any type of heightened scrutiny where the government bears some burden.

Concurring, Judge Kleinfeld stated that he concurred in the result but wrote separately for two reasons. First, there was no need to reach the question of whether strict scrutiny applied, so he would not. While strict scrutiny may be appropriate, as the majority concluded, nevertheless, the panel should not make more law than was necessary to decide the case. Second, Judge Kleinfeld wished to expand

upon the absence of justification in the record for what the County did. There was no evidence whatsoever in the record to show why the particular inclusions and exceptions relating to firearms, ammunition, and shooting ranges reasonably fit the purpose of slowing the spread of the COVID-19 virus. The only document the County pointed to as justification was the edict itself, in which its Health Officer recited in the "Whereas" clauses that "social isolation is considered useful" for this purpose. The County provided no evidence and no justification for why bicycles could be purchased and delivered, for example, but firearms could not even be picked up at the storefront, or for why such outdoor activities as walking, bicycling, and golfing were allowed, but acquiring and maintaining proficiency at outdoor shooting ranges was not. The County has simply neglected to make a record that could justify its actions. Neither pandemic nor even war wipes away the Constitution.

Concurring, Judge VanDyke wrote separately to make two additional points. First Judge VanDyke predicted that this ruling will almost certainly face an en banc challenge because that is what always happens when a three-judge panel upholds the Second Amendment in this Circuit. Second, Judge VanDyke stated that this Circuit's Second Amendment framework is exceptionally malleable and essentially equates to a rational basis review. Judge VanDyke figured there was no reason why he shouldn't write an alternative draft opinion that would apply this Circuit's test in a way more to the liking of the majority court. That way, he could demonstrate just how easy it was to reach any desired conclusion under the current framework, and the majority of the court could get a jump-start on calling this case en banc. To better explain the reasoning and assumptions behind this type of analysis,

Judge VanDyke's alternative draft contains footnotes that offer further elaboration.

COUNSEL

Raymond M. DiGuiseppe (argued), The DiGuiseppe Law Firm P.C., Southport, North Carolina; Joseph G.S. Greenlee, Firearms Policy Coalition, Sacramento, California; Ronda Baldwin-Kennedy, Law Office of Ronda Baldwin-Kennedy, Agoura Hills, California; for Plaintiffs-Appellants.

Christine Renshaw (argued), Assistant County Counsel; Jeffrey Barnes, Chief Assistant County Counsel; Office of the County Counsel, Ventura, California; for Defendants-Appellees.

OPINION

VANDYKE, Circuit Judge:

"[T]he right of the people to keep and bear Arms," U.S. Const. amend. II, means nothing if the government can prohibit all persons from acquiring any firearm or ammunition. But that's what happened in this case. Under California's highly regulated framework for firearms, law-abiding citizens can only obtain firearms and ammunition by arriving in-person to government-approved gun and ammunition shops. And after purchasing a firearm, they must wait a minimum of ten days to obtain it (and sometimes much longer). When COVID hit, Ventura County, California issued a series of public health orders (collectively, Orders) that mandated a 48-day closure of gun shops, ammunition shops, and firing ranges. They did this

while allowing other businesses like bike shops to remain open. The Orders also prohibited everyone from leaving their homes other than for preapproved reasons, which did not include traveling to gun or ammunition shops or firing ranges outside the County.

The Orders therefore wholly prevented law-abiding citizens in the County from realizing their right to keep and bear arms, both by prohibiting access to acquiring any firearm and ammunition, and barring practice at firing ranges with any firearms already owned. These blanket prohibitions on access and practice clearly burden conduct protected by the Second Amendment and fail under both strict and intermediate scrutiny. We therefore reverse and remand to the district court.[1]

[1] As described below, the County has since withdrawn its blanket prohibitions. Although Appellees do not raise the issue of mootness on appeal, "[w]e have an independent duty to consider *sua sponte* whether a case is moot." *Students for a Conservative Am. v. Greenwood*, 391 F.3d 978 (9th Cir. 2004) (citation omitted). In this case, Appellants sought nominal damages, which "provide the necessary redress for a completed violation of a legal right." *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 802 (2021). Under *Uzuegbunam*, therefore, the fact that Appellants sought damages precludes a mootness claim. *See id.* But even if Appellants had not sought nominal damages, the Orders provided for perpetual extensions, so it cannot be said that there "is no reasonable expectation . . . that the alleged violation will recur" and "interim relief or events have completely and irrevocably eradicated the effects of the alleged violation." *Fikre v. FBI*, 904 F.3d 1033, 1037 (9th Cir. 2018) (citation and internal quotation marks omitted); *see also Tandon v. Newsom*, 141 S. Ct. 1294, 1297 (2021) (per curiam) ("[E]ven if the government withdraws or modifies a COVID restriction in the course of litigation, that does not necessarily moot the case."). The mootness exception for wrongs that have been terminated and are unlikely to recur therefore does not apply. *See Fikre*, 904 F.3d at 1037.

BACKGROUND

Appellants Kelly Ann Chakov McDougall,[2] Juliana Garcia, Second Amendment Foundation, Inc., California Gun Rights Foundation, and Firearms Policy Coalition, Inc. (collectively, Appellants) appeal the district court's dismissal of their complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).[3] They claim that the district court erred in concluding that they failed to sufficiently state a plausible claim that the Orders violated their Second Amendment rights. To fully understand the Orders' impact on Appellants' Second Amendment rights, some background on California's regulatory framework is necessary.[4]

A. California's Extensive Regulatory Framework for Firearms

As we have previously acknowledged, "California has extensive laws regulating the sale and purchase of firearms."

---

[2] After the parties filed their briefs, Plaintiff Donald McDougall passed away and his counsel moved to substitute Kelly Ann Chakov McDougall in his place. We grant the Motion for Substitution of Party (ECF 36).

[3] Appellant Garcia is a County resident. Garcia desired to purchase a firearm but was unable to acquire a Firearm Safety Certificate or purchase a firearm and ammunition due to the Orders. The remaining appellants are non-profit organizations who have numerous members similarly situated to Garcia.

[4] *See Teixeira v. County of Alameda*, 873 F.3d 670, 691 (9th Cir. 2017) (en banc) (Tallman, J., concurring in part and dissenting in part) ("The impact of this county ordinance on the fundamental rights enshrined in the Second Amendment cannot be viewed in a vacuum without considering gun restrictions in California as a whole.").

Silvester v. Harris, 843 F.3d 816, 818 (9th Cir. 2016). Under California law, individuals can only complete the sale, loan, or transfer of a firearm through a licensed firearm dealer (gun shops). *See* Cal. Penal Code §§ 27545; 28050. After purchasing, individuals must wait ten days before receipt of the firearm. *See* Cal. Penal Code §§ 26815, 27540.[5]

With limited exceptions, individuals must also acquire or otherwise transfer and take possession of ammunition from duly licensed firearm and/or ammunition retailers (ammunition shops). *See* Cal. Penal Code §§ 16151, 30312, 30342, 30370; *see also Rhode v. Becerra*, 445 F. Supp. 3d 902, 912 (S.D. Cal. 2020).[6]

Eligible persons must also obtain a valid Firearm Safety Certificate to acquire firearms, *see* Cal. Penal Code § 26840, which involves taking a written test "generally at participating firearms dealerships and private firearms training facilities."[7] In addition to taking a written test,

[5] Limited exceptions exist for certain purchases, including peace officers and special permit holders. Cal. Penal Code §§ 26950, 26965.

[6] While the district court in *Rhode* preliminarily enjoined background checks for ammunition sales pursuant to California Penal Code §§ 30370(a)–(d) and § 30352, *see Rhode*, 445 F. Supp. 3d at 910, 957, a motions panel of this court stayed the injunction pending appeal. *Rhode v. Becerra*, No. 20-55437, 2020 WL 9938296 at *1 (9th Cir. May 14, 2020). A merits panel of this court then ordered the appeal to be held in abeyance pending the issuance of the mandate in *Duncan v. Becerra*, No. 19-55376. *Rhode v. Rodriquez,* No. 20-55437 (9th Cir. Mar. 19, 2021), ECF No. 82. In any event, the parties do not dispute that the Orders prevented County residents from engaging in ammunition transactions.

[7] *Becoming A DOJ Certified Instructor And Maintaining Current DOJ Certified Instructor Certification*, STATE OF CALIFORNIA

eligible persons must also "perform a safe handling demonstration . . . . in the presence of a DOJ Certified Instructor[,] . . . [which] are generally performed at the firearms dealership."[8]

Once someone lawfully acquires a firearm, California law generally prohibits them from openly carrying a handgun in public places. Cal. Penal Code § 26350. And those lawfully in possession of a handgun can only carry it while concealed with a license—which can only be obtained (if at all, *see Peruta v. County of San Diego*, 824 F.3d 919, 942 (9th Cir. 2016) (en banc)), by completing an in-person firearms training class that involves "live-fire shooting exercises on a firing range." Cal. Penal Code §§ 25400, 26150(a)(4), 26165(a)(3).

The closure of gun shops, ammunition shops, and firing ranges therefore eliminates the only lawful means to acquire firearms and ammunition within the County, as well as law-abiding County residents' ability to carry handguns in public. As Appellants alleged in their operative Complaint:[9]

> If firearms and ammunition could be purchased online like other constitutionally

---

DEPARTMENT OF JUSTICE (last visited Sept. 10, 2021), https://oag.ca.gov/firearms/fscinfo.

[8] *California Firearms Laws Summary*, CALIFORNIA DEPARTMENT OF JUSTICE at 4 (2016), https://oag.ca.gov/sites/all/files/agweb/pdfs/firearms/pdf/cfl2016.pdf. Pawn shops and immediate family members are exempt from the safe handling demonstration requirement. *Id.*

[9] Given that Appellants have appealed the district court's dismissal of their complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), we accept Appellants' well-pleaded allegations of material fact as true. *See Judd v. Weinstein*, 967 F.3d 952, 955 (9th Cir. 2020).

> protected artifacts, such as paper, pens, ink, and technology products that facilitate speech, then individuals could simply purchase what they need and have the items delivered to their doorsteps. But because of an onerous and complicated federal, state, and local regulatory scheme, people in California cannot exercise their Second Amendment right to keep and bear arms without going in person to such . . . businesses—at least once for ammunition and at least twice for firearms.

B. County Orders

It was against this extensive regulatory backdrop that the County began issuing public health orders in March of 2020 in response to the COVID-19 pandemic.

On March 17, 2020, the County ordered, among other things, that all County residents ages 75 and older "shelter in their place of residence" until April 1. These senior citizens could only leave their residences "to seek medical care, nutrition, or to perform essential work in healthcare or government." These narrow exceptions did not include the acquisition of firearms and ammunition, or practice therewith. "Violation of or failure to comply with [the] Order [constituted] a misdemeanor punishable by fine, imprisonment, or both . . . ."

Three days later, on March 20, the County supplemented its March 17 Order by mandating that "[*a*]*ll* persons currently living within [the] County . . . stay at their places of residence, as required by the Governor's Executive Order N-33-20, subject to the exemptions set forth in this Order"

(emphasis added).[10] People of all ages could leave their residences only to exercise or work around their residences (e.g., gardening). And people not subject to the stay-at-home mandate from the March 17 Order could also leave their residence solely to engage in "Essential Activities and Essential Governmental Functions or Services or to operate or work at Essential Businesses."

The March 20 Order limited the permitted "Essential Activities" to only five categories, which the parties agree did *not* include the purchase of firearms and ammunition, or practice therewith.[11] To emphasize the strict nature of the stay-at-home mandate, the March 20 Order continued, "[a]ll travel . . . except for Essential Travel and Essential Activities[] is prohibited."[12] It further reiterated that only "travel into or out of the County to perform Essential Activities, operate Essential Businesses or to maintain or

[10] On March 19, Governor Gavin Newsom signed Executive Order N-33-201, directing all California residents to "stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors."

[11] The five categories of "Essential Activities" included: (1) "engag[ing] in activities or perform[ing] tasks essential to [the] health and safety" of individuals or their family and household members, (2) "obtain[ing] necessary services or supplies for themselves and their family or household members," (3) "engag[ing] in outdoor activit[ies]," (4) "perform[ing] work providing products and services at an Essential Business or to otherwise carry out activities specifically permitted in this Order, including Minimum Basic Operations;" and (5) "car[ing] for a family member or pet in another household."

[12] While "Essential Travel" included "[t]ravel engaged in interstate commerce and otherwise subject to the provisions of the Commerce Clause of the United States Constitution," Appellees have not argued that this provision included the ability to acquire firearms or practice with them outside the County.

provide Essential Governmental Functions or Services [was allowed]."

The March 20 Order also mandated that "[a]ll businesses with a facility in the County, except Essential Businesses, are required to cease all activities at facilities located within the County except Minimum Basic Operations." But it "strongly encouraged" "[a]ll Essential Businesses . . . to remain open." "Essential Businesses" included businesses like hardware stores and laundromats, but not gun shops, ammunition shops, or firing ranges. Notably, the March 20 Order did not provide any explanation for its designation of "Essential Businesses."

The March 20 Order concluded that it would remain in effect until April 19, or "until it is extended, rescinded, superseded or amended in writing by the Health Officer." And "violation of or failure to comply with th[e] Order [wa]s a misdemeanor punishable by fine, imprisonment, or both."

Eleven days later, on March 31, the County supplemented and extended the March 20 Order by, among other things, limiting "the activities of . . . Essential Businesses . . . to the provision of those goods and services essential to the overall intent of the . . . Orders." For example, farmers' markets could sell food and beverages, but not clothing or jewelry. It also added that "a violation of the . . . Orders by a business may subject the business to liability under the state's unfair competition law as well as other civil and criminal penalties." The March 31 Order did not reference gun shops, ammunition shops, or firing ranges—despite an advisory memorandum that had been recently issued by the United States Department of Homeland Security, Cybersecurity & Infrastructure Agency (CISA) listing all those who work in supporting the operation of firearm or ammunition product manufacturers,

retailers, importers, distributors, and shooting ranges as "essential critical infrastructure workers."

Nine days after the March 31 Order, on April 9, the County supplemented its previous Orders by prohibiting gatherings of two or more people outside a single household or living unit. It also added three new businesses to the "Essential Businesses" list: bicycle repair and supply shops (for online sales only), residential real estate services, and auto dealerships (also only online sales). Like the March 20 Order, the April 9 Order omitted any rationale as to its designation of these three, but only these three, as newly added "Essential Businesses."

On April 20, in a new order, the County reaffirmed many of its previous prohibitions but added new provisions. For example, the April 20 Order loosened the requirements for previously designated "Essential Businesses" by allowing in-store bicycle sales. And it expanded the list of "Essential Businesses" by adding "[b]oat yards and other businesses that provide for safety, security and sanitation of boats stored at docks and marinas." Gun shops, ammunition shops and firing ranges remained off the "Essential Businesses" list, and the County still omitted any explanation as to its selection of "Essential Businesses." It also expanded the list of "Essential Activities" to include, among other things, golfing (while not requiring golfing groups to be from the same household).

The April 20 Order, did, however, accommodate people "who initiated the purchase of a firearm at a store located within the County before March 20, 2020 (i.e., the day firearm stores were ordered to be closed . . .)." For those purchasers only, it allowed for limited actions "necessary to complete the firearm purchase." These actions must "occur by appointment only, and only the purchaser and one person

on behalf of the store shall be present." But for the rest of the general public who hadn't purchased a firearm before March 20, "[t]he firearm store shall remain closed." It provided no explanation as to why the general public could not purchase firearms or ammunition by appointment as well.

Almost three weeks later, on May 7, the County indicated in a new order that various businesses could reopen. Although the May 7 Order did not explicitly refer to gun shops, ammunition shops, or firing ranges, the County's frequently asked questions (FAQs) indicated that "[w]ith the elimination of the essential business model in the local health order, and reliance on the State health order model for critical infrastructure, the Sheriff and local health officer have determined that the gun stores may fully open to the public provided they implement and register site-specific prevention plans . . . ." The May 7 Order further defined Essential Activities, in part, as activities necessary "[t]o otherwise carry out activities specifically permitted in this . . . Order."[13]

Thus, from March 20 to May 7, 2020—a total of 48 days—the Orders mandated the closure of gun shops, ammunition shops, and firing ranges throughout the County to the general public, including Appellants. The closure prohibited County residents from leaving their homes to acquire any firearms or ammunition and maintain proficiency in the use of firearms at firing ranges. Violations

[13] But the May 7 Order still prohibited certain senior citizens from leaving their residence unless it was "necessary to seek medical care or exercise or nutrition or to perform essential work . . . ." The parties, however, limit the relevant time period at issue in this case to 48 days, from March 20 to May 7, 2020.

of these Orders could subject a person to criminal sanctions and civil liability. The County repeatedly reaffirmed these prohibitions, while simultaneously allowing businesses like hardware stores, laundromats, bicycle shops, and even boat yards to open, and allowing people to leave their homes for activities like golfing. The County never explained its rationale behind the designations of businesses and activities deemed "Essential." The Orders therefore denied anyone who did not possess both a firearm and ammunition on March 19, 2020, from exercising their fundamental rights protected by the Second Amendment until at least May 7.[14]

C. Procedural History

Appellants filed a lawsuit on March 28, in the midst of the issuance of the first few orders, alleging claims under 42 U.S.C. § 1983 and naming the County as a defendant.[15] In the operative complaint, Appellants alleged that Appellees' "orders, directives, policies, practices, customs, and enforcement actions" violated their rights under the Second Amendment (Second Amendment claim).

After the district court denied two temporary restraining orders (TROs), Appellees filed a motion to dismiss. In evaluating the motion, the district court concluded that

[14] As explained further below, because California imposes a minimum 10-day waiting period on the purchase of firearms, if a County resident had not initiated a firearm purchase before March 20, as a practical matter she was strictly prohibited from obtaining a firearm from March 20 until May 17—almost two months.

[15] In the operative First Amended Complaint, Appellants named the County of Ventura, Ventura County Sheriff Bill Ayub, Ventura County Public Health Care Agency Director William T. Foley, Ventura County Public Health Medical Director and Health Officer Robert Levin, and the Ventura County Public Health Care Agency (collectively, Appellees).

Appellants failed to state a claim under both *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), and our circuit's traditional Second Amendment analysis. When evaluating Appellants' claims under the traditional tiered-scrutiny analysis, the district court first assumed that the Orders burdened Second Amendment conduct, and then determined that the Orders "do not substantially burden the core right of the Second Amendment" so "intermediate scrutiny is appropriate." Applying intermediate scrutiny, the district court ultimately concluded that the Orders constituted a "reasonable fit between the County's objective of slowing the spread of COVID-19 and the temporary closure of non-essential businesses, including firearms retailers." The district court therefore granted the motion to dismiss. Appellants appeal that order and judgment.

STANDARD OF REVIIEW

"We review de novo an order granting a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim, accepting as true all well-pleaded allegations of material fact and construing those facts in the light most favorable to the non-moving party." *Judd*, 967 F.3d at 955. "[D]ismissal is affirmed only if it appears beyond doubt that [the] plaintiff can prove no set of facts in support of its claims which would entitle it to relief." *City of Almaty v. Khrapunov*, 956 F.3d 1129, 1131 (9th Cir. 2020) (citation, internal alternations, and quotation marks omitted). "It is axiomatic that the motion to dismiss for failure to state a claim is viewed with disfavor and is rarely granted." *McDougal v. County of Imperial*, 942 F.2d 668, 676 n.7 (9th Cir. 1991) (citation, internal alterations, and quotation marks omitted).

DISCUSSION

As noted above, this case asks us to decide whether the Orders' closure of gun shops, ammunition shops, and firing ranges—which effectively prohibited any lawful acquisition of firearms and ammunition within the County for at least 48 days—violates the Second Amendment. The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. Like most circuits, "we have adopted a two-step inquiry for assessing whether a law violates the Second Amendment." *Mai v. United States*, 952 F.3d 1106, 1113 (9th Cir. 2020); *see also Jackson v. City and County of San Francisco*, 746 F.3d 953, 960 (9th Cir. 2014). "This test (1) asks whether the challenged law burdens conduct protected by the Second Amendment and (2) if so, directs courts to apply an appropriate level of scrutiny." *Mai*, 952 F.3d at 1113 (citation and internal quotation marks omitted). "[T]his inquiry bears strong analogies to the Supreme Court's free-speech caselaw." *Jackson*, 746 F.3d at 960.

As discussed below, the Orders' effective prohibition on all access to and the practice of firearms at firing ranges throughout the County clearly burdens conduct protected by the Second Amendment. And because *Jacobson* does not concern the specific, constitutionally enumerated right at issue here, and essentially applied rational basis review, it does not apply. Instead, the severity of the Orders' burden warrants strict scrutiny—which the Orders fail to satisfy because they are not the least restrictive means to further Appellees' interest, especially when compared to businesses that have no bearing on fundamental rights, yet nevertheless were allowed to remain open. And even if intermediate

scrutiny was the appropriate standard of review, Appellees failed to show how the Orders satisfied it given their complete omission of any explanation as to why gun shops, ammunition shops, and firing ranges posed any more of a risk than other non-Constitutionally protected activities that were deemed "essential" and allowed to remain open.

1. The Orders Burden Conduct Protected by the Second Amendment.

We must first decide whether the Orders' 48-day closure of gun shops, ammunition shops, and firing ranges "burdens conduct protected by the Second Amendment, based on a historical understanding of the scope of the Second Amendment right." *Jackson*, 746 F.3d at 960 (citations, internal alteration, and quotation marks omitted). "To determine whether a challenged law falls outside the historical scope of the Second Amendment, we ask whether the regulation is [1] one of the presumptively lawful regulatory measures identified in *Heller*, or [2] whether the record includes persuasive historical evidence establishing that the regulation at issue imposes prohibitions that fall outside the historical scope of the Second Amendment." *Id.* (internal citations and quotation marks omitted). The "presumptively lawful regulatory measures identified in *Heller*" are "well-defined and narrowly limited." *Id.* (citation and internal quotation marks omitted).

Neither of these two threshold inquiries are met here. First, no party argues that a 48-day closure of all gun shops, ammunition shops, and firing ranges in the County is one of *Heller*'s "presumptively lawful regulatory measures." *Id.* Nor could they, as nothing in *Heller* suggests that a *complete and total ban* on the commercial sale of all arms and ammunition implicates the "well-defined and narrowly

limited" presumptively lawful categories. *See id.*; *see also District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008).

Second, the record does not include persuasive historical evidence establishing that the Orders impose prohibitions that fall outside the Second Amendment's historical scope. *See Jackson*, 746 F.3d at 960, 962; *see also Teixeira*, 873 F.3d at 682 ("[D]etermining the scope of the Second Amendment's protections requires a textual and historical analysis of the amendment." (citation omitted)). Instead, *Heller*'s exhaustive textual and historical Second Amendment analysis—as well as our court's own caselaw—reveal that the ability to acquire firearms and ammunition, and maintain proficiency in their use at firing ranges, falls well within the Second Amendment's historical scope. *See Heller*, 554 U.S. at 582 ("[T]he most natural reading of 'keep Arms' in the Second Amendment is to 'have weapons.'"); *id.* at 594 ("[Colonists] understood the right to enable individuals to defend themselves."); *id.* at 617–18 ("[T]o bear arms implies something more than the mere keeping; it implies the learning to handle and use them[;] . . . it implies the right to meet for voluntary discipline in arms, observing in doing so the laws of public order." (quoting from judge and professor Thomas Cooley's 1880 work, *General Principles of Constitutional Law*); *id.* at 619 ("Some general knowledge of firearms is important to the public welfare; because it would be impossible, in case of war, to organize promptly an efficient force of volunteers unless the people had some familiarity with weapons of war." (quoting B. Abbott, *Judge and Jury: A Popular Explanation of the Leading Topics in the Law of the Land* 333 (1880))); *Teixeira*, 873 F.3d at 686 ("The British embargo and the colonists' reaction to it suggest . . . that the Founders were aware of the need to preserve citizen *access* to firearms in light of the risk that a strong government would use its power

to disarm the people."). Indeed, a complete ban on the ability to acquire arms and ammunition, and the closure of all firing ranges, renders the right to keep and bear arms "hardly . . . worth the paper it consumed." *Heller*, 554 U.S. at 609 (citation omitted).

While Appellees cite *Silvester* in arguing that California has a "long history of delaying possession of firearms without impinging on the Second Amendment," California's historical delays were far shorter than the 48-day mandated closure at issue here—which actually amounts to a 58-day delay for the possession of firearms when California's mandatory 10-day waiting period between purchase and possession is added to the County's 48-day ban. *See Silvester*, 843 F.3d at 823–24. Also important is the fact that unlike *Silvester*—which had clearly established timelines for the delays—the delays here were indefinite and fluid. And even in *Silvester* we assumed without deciding that the challenged 10-day waiting period as applied to appellants in that case fell within Second Amendment's historical scope. *Id.* at 826–27. Appellees' lack-of-burden argument fails. "Because [the Orders] . . . are not part of a long historical tradition of proscription," we "conclude that [the Orders] burden[] rights protected by the Second Amendment." *Jackson*, 746 F.3d at 963 (internal citation and quotation marks omitted).

2. The Orders Fail Under Any Level of Heightened Scrutiny.

Because we determine that the Orders burden conduct protected by the Second Amendment, we "proceed to the second step of the Second Amendment inquiry to determine the appropriate level of scrutiny." *Id.* at 960. "When ascertaining the appropriate level of scrutiny, just as in the First Amendment context, we consider: (1) how close the

law comes to the core of the Second Amendment right and (2) the severity of the law's burden on the right." *Id.* at 960–61 (citation and internal quotation marks omitted). "In weighing the severity of the burden, we are guided by a longstanding distinction between laws that regulate the manner in which individuals may exercise their Second Amendment right, and laws that amount to a total prohibition of the right." *Pena v. Lindley*, 898 F.3d 969, 977 (9th Cir. 2018).

"The result is a sliding scale. A law that imposes such a severe restriction on the fundamental right of self defense of the home that it amounts to a destruction of the Second Amendment right is unconstitutional under any level of scrutiny." *Silvester*, 843 F.3d at 821 (pointing to *Heller* as an example). "A law that implicates the core of the Second Amendment right and severely burdens that right warrants strict scrutiny." *Id.* "If a challenged law does not implicate a core Second Amendment right, or does not place a substantial burden on the Second Amendment right, the court may apply intermediate scrutiny." *Id.* (citation, internal alteration, and quotation marks omitted). But rational basis review is not appropriate. *See U.S. v. Chovan*, 735 F.3d 1127, 1137 (9th Cir. 2013). In determining the appropriate level of heightened scrutiny, "we are . . . guided by First Amendment principles." *Jackson*, 746 F.3d at 961.

Given that *Jacobson* does not concern a specific, constitutionally enumerated right and essentially applied rational basis review, *Jacobson* does not apply. Instead, the Orders' severe burden on the core of the Second Amendment right warrants strict scrutiny. And because the Orders are not the least restrictive means available, they fail to satisfy strict scrutiny's high standard. But even if intermediate

scrutiny applied, Appellees have failed to satisfy their burden of showing a reasonable fit.

a. **Jacobson *Does Not Apply.***

Over 115 years ago, the Supreme Court in *Jacobson* addressed whether a state statute requiring smallpox vaccinations violated "the inherent right of every freeman to care for his own body and health in such way as to him seems best." 197 U.S. at 26. The defendant in *Jacobson* structured his claim as a substantive due process challenge emanating from the Fourteenth Amendment; no specific enumerated right was at issue.[16] *Id.* at 14, 25–26. The Court began by discussing the government's general police power, noting that "[t]he mode or manner in which [local administrations choose to safeguard public health and safety] . . . is within the discretion of the state, subject, of course . . . only to the condition that no rule prescribed by a state . . . shall contravene the Constitution of the United States, nor infringe any right granted or secured by that instrument." *Id.* at 25. "A local enactment or regulation," the Court continued, "even if based on the acknowledged police powers of a state, *must always yield in case of conflict* with the exercise by the general government of any power it possesses under the Constitution, *or with any right which that instrument gives or secures*." *Id.* (emphasis added).

After discussing well-established principles of police power, the Court reasoned that "the [state] legislature . . .

[16] *See Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 70 (2020) (Gorsuch, J., concurring) ("Jacobson claimed that he possessed an implied 'substantive due process' right to 'bodily integrity' that emanated from the Fourteenth Amendment and allowed him to avoid not only the vaccine but *also* the $5 fine (about $140 today) and the need to show he qualified for an exemption." (citation omitted)).

required the inhabitants of a city or town to be vaccinated only when, in the opinion of the board of health, that was necessary for the public health or the public safety." *Id.* at 27. Given the general deference afforded to the legislature, the Court determined that legislative action is only unconstitutional "if a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law." *Id.* at 31. Because the state statute at issue satisfied neither of these two prongs, the Court concluded that the statute did not "invade[] any right secured by the Federal Constitution." *Id.* at 31, 38. Multiple jurists and legal commentators have likened this analysis by the *Jacobson* Court to what we now call rational basis review.[17]

In the intervening century since *Jacobson*, the Supreme Court has repeatedly determined that some level of heightened scrutiny applies when evaluating laws implicating specific, enumerated constitutional rights. *See Heller*, 554 U.S. 628 n.27 ("[The rational basis test] could not be used to evaluate the extent to which a legislature may regulate a specific, enumerated right, be it the freedom of

[17] *See, e.g.*, *Roman Cath. Diocese*, 141 S. Ct. at 70 (Gorsuch, J., concurring) ("Although *Jacobson* pre-dated the modern tiers of scrutiny, this Court essentially applied rational basis review to . . . Jacobson's challenge . . . ."); *League of Indep. Fitness Facilities & Trainers, Inc. v. Whitmer*, 814 F. App'x 125, 129 (6th Cir. 2020) (inferring that *Jacobson* presented a rational basis review); Erwin Chemerinsky & Michele Goodwin, *Civil Liberties in a Pandemic: The Lessons of History*, 106 Cornell L. Rev. 815, 829 (2021) ("From the perspective of today, it is striking how much *Jacobson* used the language of rational basis review, although that as a formal test was not formulated until much later by the Supreme Court.").

speech, the guarantee against double jeopardy, the right to counsel, or the right to keep and bear arms."). Regarding the Second Amendment, the Supreme Court has explicitly determined that rational basis review does *not* apply, reasoning that "[i]f all that was required to overcome the right to keep and bear arms was a rational basis, the Second Amendment would be redundant with the separate constitutional prohibitions on irrational laws, and would have no effect." *Id.* Our court has reiterated that "[l]aws burdening Second Amendment rights must withstand more searching scrutiny than rational basis review." *Mai*, 952 F.3d at 1115 (citation omitted).

The Supreme Court has also repeatedly affirmed that heightened-scrutiny requirements still apply during times of crises. In several recent cases evaluating public health orders issued in response to the COVID pandemic, the Supreme Court applied strict scrutiny and ignored *Jacobson* entirely. *See Tandon*, 141 S. Ct. at 1296; *S. Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716, 717–18 (2021) (Statement of Gorsuch, J.); *Roman Cath. Diocese*, 141 S. Ct. at 67. The only writing from the Court pertaining to COVID-related government orders that relied on *Jacobson* was Chief Justice Roberts's lone concurrence in *South Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613 (2020) (Roberts, C.J., concurring in the denial of application for injunctive relief), but even he has distanced himself from *Jacobson* in more recent writings. *See Roman Cath. Diocese*, 141 S. Ct. at 75–76 (Roberts, C.J., dissenting). And when evaluating other public health orders issued in response to COVID-19, this court has similarly ignored *Jacobson* and applied the tiered-scrutiny analysis. *See, e.g.*, *Calvary Chapel Dayton Valley v. Sisolak*, 982 F.3d 1228, 1234 (9th Cir. 2020). This makes sense: As the Supreme Court has repeatedly indicated, national crises do

not water down the application of Constitutional rights—instead, the need to protect those rights is especially acute during those times. *See S. Bay United Pentecostal Church*, 141 S. Ct. at 718 (Statement of Gorsuch, J.) ("Even in times of crisis—perhaps *especially* in times of crisis—we have a duty to hold governments to the Constitution.").

Jacobson's rational basis review of a substantive due process claim therefore renders it inapplicable here. "*Jacobson* . . . . involved an entirely different mode of analysis, an entirely different right, and an entirely different kind of restriction." *Roman Cath. Diocese*, 141 S. Ct. at 70 (Gorsuch, J., concurring). Where *Jacobson* concerned a substantive due process claim that traditionally warrants rational basis review absent suspect classifications, *id.*, Appellants bring a Second Amendment claim that traditionally warrants heightened scrutiny. Even *Jacobson* itself correctly recognized that police powers "must always yield in case of conflict . . . with any right which [the Constitution] gives or secures." 197 U.S. at 25. And where the challenged restriction at issue in *Jacobson* allowed for viable alternatives to avoid the alleged harm, *see Roman Cath. Diocese*, 141 S. Ct. at 71 (Gorsuch, J., concurring), the Orders at issue here effectively imposed a 48-day complete ban on acquiring firearms and ammunition, and practicing with firearms at firing ranges. "Nothing in *Jacobson* purported to address, let alone approve, such serious and long-lasting intrusions into settled constitutional rights." *Id.* *Jacobson* is inapplicable both on the facts and the law.[18]

[18] Moreover, since *Roman Catholic Diocese*, several courts have followed the Supreme Court's lead and ignored *Jacobson* in analyzing the constitutionality of public health orders. *See, e.g., Agudath Israel of Am. v. Cuomo*, 983 F.3d 620, 635 (2d Cir. 2020) ("[The] reliance on

b. We Do Not Decide That the Orders Are Categorically Unconstitutional.

Although we determine that the Orders warrant heightened scrutiny, we decline to determine whether the Orders are categorically unconstitutional. *See Silvester*, 843 F.3d at 821 ("A law that imposes such a severe restriction on the fundamental right of self defense of the home that it amounts to a destruction of the Second Amendment right is unconstitutional under any level of scrutiny."). A 48-day closure of all gun shops, ammunition shops, and firing ranges throughout the County—which effectively forecloses all available means to acquire firearms and ammunition and practice with firearms at firing ranges—would seem to "amount[] to a destruction of the Second Amendment right," and therefore be categorically unconstitutional. *Jackson*, 746 F.3d at 961 (citation and internal alteration omitted); *see also Heller*, 554 U.S. at 630 (determining that D.C.'s "requirement . . . that firearms in the home be rendered and kept inoperable at all times . . . . makes it impossible for citizens to use them for the core lawful purpose of self-defense and is hence

---

Jacobson was misplaced."); *Calvary Chapel Dayton Valley*, 982 F.3d at 1232 (applying strict scrutiny to First Amendment claims); *Northland Baptist Church of St. Paul, MN v. Walz*, 530 F. Supp. 3d 790, 811 (D. Minn. 2021) ("Based on the Supreme Court's recent application of traditional tiers of constitutional scrutiny in *Roman Catholic Diocese*, the Court concludes that *Jacobson* does not replace the traditional tiers of constitutional scrutiny."). And our determination here that *Jacobson* does not apply when evaluating fundamental rights aligns with at least one sister circuit that has reached a similar conclusion. *See Agudath Israel of Am. v. Cuomo*, 983 F.3d 620, 635 (2d Cir. 2020) ("*Jacobson* predated the modern constitutional jurisprudence of tiers of scrutiny, was decided before the First Amendment was incorporated against the states, and did not address the free exercise of religion." (citation and internal quotation marks omitted)).

unconstitutional."). But because the Orders fail to satisfy any level of heightened scrutiny, we base our decision on the traditional tiered scrutiny analysis.

c. Strict Scrutiny Applies.

Because *Jacobson* does not apply, we must determine which level of heightened scrutiny applies. As we have previously determined, "[a] law that [1] implicates the core of the Second Amendment right and [2] severely burdens that right warrants strict scrutiny." *Silvester*, 843 F.3d at 821. Both of these requirements are met here.

First, the Orders "implicate[d] the core of the Second Amendment right" because they foreclosed the ability to acquire arms and ammunition and maintain proficiency in the use of firearms—rights which an en banc panel of this court has repeatedly acknowledged are "necessary to the realization of the core right to possess a firearm for self-defense." *Teixeira*, 873 F.3d at 677; *see also id.* ("As with *purchasing ammunition* and *maintaining proficiency in firearms use*, the core Second Amendment right to keep and bear arms for self-defense wouldn't mean much without the *ability to acquire arms*." (emphases added) (citation and internal quotations omitted)); *see also id.* at 680 ("[G]un buyers have no right to have a gun store in a particular location, *at least as long as their access is not meaningfully constrained*." (emphasis added)); *id.* at 682 ("Commerce in firearms is a necessary prerequisite to keeping and possessing arms for self-defense . . . .").[19] If these rights are

[19] In *Teixeira*, an en banc panel of our court determined, among other things, that the plaintiffs failed to state a claim that a county zoning ordinance prohibiting firearm sales in certain areas "impedes any resident of [that county] who wishes to purchase a firearm from doing

"necessary to the realization of the core Second Amendment rights," *id.* at 677, then a fortiori they must "implicate[] the core of the Second Amendment right." *Silvester*, 843 F.3d at 821.

Second, the Orders' mandated closure of all gun shops and firing ranges throughout the County "severely burdens that right" by foreclosing altogether County residents' ability to acquire firearms or ammunition or maintain proficiency in their use at firing ranges. As noted above, under California's extensive firearm regulations, the Orders prohibited County residents from the only lawful means of acquiring firearms and ammunition—and then prohibited those residents from leaving their homes to acquire those items elsewhere. This court has already observed that "an

---

so." 873 F.3d at 673. In evaluating the claim, the panel repeatedly referred to the *right to access firearms, ammunition, and firing ranges* when reasoning that the zoning ordinance did not meaningfully impede on those rights. *Id.* at 677–78. In emphasizing the zoning ordinance's lack of burden on the Second Amendment, the panel contrasted the Seventh Circuit's decision in *Ezell v. City of Chicago*, 846 F.3d 888 (7th Cir. 2017), where "Chicago's zoning regulations . . . so severely limited where shooting ranges may locate that *no* publicly accessible shooting range . . . existed in Chicago." *Teixeira*, 873 F.3d at 679 (citation, internal alterations, and quotation marks omitted). "No analogous restriction on the ability of . . . [c]ounty residents to purchase firearms can be inferred from the complaint in this case." *Id.* The panel therefore concluded that "gun buyers have no right to have a gun store in a particular location, *at least as long as their access is not meaningfully constrained*." *Id.* at 680 (emphasis added).

Under *Teixeira*'s rationale, this case is more like the *Ezell* cases than *Teixeira*. The Orders prevented all County residents from acquiring firearms and ammunition and maintaining the proficiency of their use at firing ranges. Just as in the *Ezell* cases, the Orders therefore squarely prohibited the very type of meaningful access that the *Teixeira* en banc panel warned against. *See id.* at 680, 688.

overall ban on gun sales would be untenable under *Heller*, because a total prohibition would *severely* limit the ability of citizens to *acquire* firearms," *Teixeira*, 873 F.3d at 688 (first emphasis added) (citation omitted)—which obviously triggers strict scrutiny. As Judge Tallman noted in *Teixeira*, "[a]ll would agree that a complete ban on the sale of firearms and ammunition would be unconstitutional." *Teixeira*, 873 F.3d at 693 (Tallman, J., concurring in part and dissenting in part). Consistent with this court's prior hypothetical discussion of the very type of "complete ban" at issue here, strict scrutiny applies.

In arguing against the application of strict scrutiny, Appellees primarily rely on *Silvester* and its holding that California's 10-day waiting period between purchase and possession of a firearm warranted intermediate scrutiny. In determining the applicable level of scrutiny, the *Silvester* panel reasoned that the contested regulation "simply requires [the plaintiffs] to wait the incremental portion of the waiting period that extends beyond the completion of the background check." 843 F.3d at 827. "The waiting period [also] does not prevent any individual from owning a firearm . . . ." *Id.* Given the "very small" effect of the waiting period on the plaintiffs—who had already passed the background check within the ten days—and the fact that "[t]here is . . . nothing new in having to wait for the delivery of a weapon," the *Silvester* panel determined that the challenged regulation did not place a "substantial burden on a Second Amendment right" and therefore warranted intermediate scrutiny. *Id.*

But *Silvester* is inapplicable here for at least three reasons. First, *Silvester* concerned *no more than* a 10-day waiting period—nearly five times shorter than the Orders' 48-day effective ban on firearm and ammunition sales at issue here. And for County residents who had not yet

purchased a firearm before the Orders took effect, the 48-day ban here was actually exacerbated by the 10-day waiting period itself, resulting in a total ban of a *58 days*—essentially two months. Moreover, the delay at issue in *Silvester* was finite—the plaintiffs only challenged the "incremental period" between the passing of a background check and possessing the purchased firearm, which only amounted to no more than 10 days. But here, each Order promised that it would remain effect until a certain date (which the County extended) *or* "until it is extended, rescinded, superseded, or amended in writing by the Health Officer."[20] In other words, the ban on protected Second Amendment activities would continue until the government said it didn't. The 10-day waiting period at issue in *Silvester* was therefore much less restrictive than the uncertain but eventual 48-day ban at issue here.

Second, the appellants in *Silvester* already possessed at least one firearm they could use for self-defense. They were seeking to avoid the 10-day waiting period when purchasing *subsequent* firearms. 843 F.3d at 818–19. But the Orders at issue here prevented County residents who owned no firearm *at all* before March 20, 2020, from obtaining any firearm whatsoever for effectively two months, right in the middle of a global crisis. Denying the ability to acquire a firearm and ammunition *at all* is fundamentally different from waiting a short time to receive an *additional* firearm. There is a very real difference between a short, defined waiting period to purchase an *additional* firearm, versus a two-

[20] While Appellees also argue that the Orders were "in effect for a finite period—from March 20 through May 7," it is only when reviewing the Orders with the benefit of hindsight that it appears finite. The text of the Orders allowed for perpetual extensions.

month ban on purchasing any firearm, ammunition, or otherwise exercising your Second Amendment rights.

Third, *Silvester*'s rationale turned on the government's claimed interest in a "cooling off" period, which is not at issue here. Here, the Orders were the County's response in a temporary time of crisis. Appellees urge that the temporary nature somehow diminishes the burden on the Second Amendment, but "[b]oth this court and the Supreme Court have repeatedly held that the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Klein v. City of San Clemente*, 584 F.3d 1196, 1207–08 (9th Cir. 2009) (citation and internal quotation marks omitted). Because First Amendment principles guide the analysis of the burden's severity in the Second Amendment context, *see Jackson*, 746 F.3d at 961, there is no reason that the loss of Second Amendment freedoms even for "minimal periods of time" would not likewise constitute irreparable injury.

This is especially true in the Second Amendment context, where the need for armed protection in self-defense can arise at a moments' notice and without warning. People don't plan to be robbed in their homes in the dead of night or to be assaulted while walking through city streets. It is in these unexpected and sudden moments of attack that the Second Amendments' rights to keep and bear arms becomes most acute. As *Heller* noted, the Second Amendment is designed to preserve and foster "the right of self-preservation," which "permit[s] a citizen to repel force by force when the intervention of society in his behalf, may be too late to prevent an injury." *Heller*, 554 U.S. at 595

(internal alterations and quotation marks omitted) (quoting 1 Blackstone's Commentaries at 145–146, n.42 (1803)).[21]

The acute need for Second Amendment rights during temporary crises was well-understood by our Founders. *See Teixeira*, 873 F.3d at 686 (acknowledging that the Second Amendment was "meant to be a strong moral check against the usurpation and arbitrary power of rulers, and as a necessary and efficient means of regaining rights when *temporarily* overturned by usurpation." (emphasis added) (citation omitted)). Modern society agrees, as firearm and ammunition sales have soared during the recent pandemic.[22] But if the government suspends these rights during times of crises, the Second Amendment itself becomes meaningless when it is needed most—especially to the victims of attacks.

The Orders imposed a far greater burden than the 10-day delay at issue in *Silvester*. Their effective ban on the

[21] This is particularly true in these turbulent times of rising crime rates and mass police resignations due to low morale and the onslaught of legislative reform. *See, e.g.*, Eric Westervelt, *Cops Say Low Morale And Department Scrutiny Are Driving Them Away From The Job*, NPR (June 24, 2021), https://www.npr.org/2021/06/24/1009578809/cops-say-low-morale-and-department-scrutiny-are-driving-them-away-from-the-job ("In many places, police morale has plunged and retirements and resignations have soared. . . . And the timing of these staffing problems couldn't be worse: multiple cities are seeing startling increases in shootings and murders . . . .").

[22] Martha Bellisle, *Ammunition shelves bare as U.S. gun sales continue to soar*, AP News (July 31, 2021), https://apnews.com/article/sports-business-health-coronavirus-pandemic-gun-politics-86e61939eb4ae1230e110ed6d7576b70 ("The COVID-19 pandemic, coupled with record sales of firearms, has fueled a shortage of ammunition in the United States that's impacting law enforcement agencies, people seeking personal protection, recreational shooters and hunters—and could deny new gun owners the practice they need to handle their weapons safely.").

acquisition of firearms and ammunitions, and closure of all firing ranges where County residents can safely maintain their proficiency in the use of firearms, severely burdens the core of the Second Amendment right. Strict scrutiny applies.

d. The Orders Fail Under Strict Scrutiny.

The Orders cannot survive strict scrutiny. "Under that standard, the regulation is valid only if it is the least restrictive means available to further a compelling government interest." *Berger v. City of Seattle*, 569 F.3d 1029, 1050 (9th Cir. 2009) (en banc).

The Orders attempt to "[s]tem[] the spread of COVID-19," which "is unquestionably a compelling interest." *Roman Cath. Diocese*, 141 S. Ct. at 67. But the recent Supreme Court COVID cases compel the conclusion that the Orders are not the least restrictive means to further this compelling interest. The complete closure of all gun shops, ammunition shops, and firing ranges is "far more restrictive than any COVID-related regulations that have previously come before the [Supreme] Court," as those cases only concerned regulations *limiting the capacity* at activities that implicated fundamental rights, not an *outright ban* of those activities altogether. *Roman Cath. Diocese*, 141 S. Ct. at 67 (citing *Calvary Chapel Dayton Valley v. Sisolak*, 140 S. Ct. 2603 (2020) (directive limiting in-person worship services to 50 people); *S. Bay United Pentecostal Church*, 140 S. Ct. at 1613 (Executive Order limiting in-person worship to 25% capacity or 100 people, whichever was lower)). "[T]here are [also] many other less restrictive rules that could be adopted to minimize the risk" of allowing gun shops, ammunition shops, and firing ranges to remain open. *Roman Cath. Diocese*, 141 S. Ct. at 67. Among other things, the County could have opened gun shops, ammunition shops, and firing ranges on an appointment-only basis, just

like it eventually did for people who purchased a firearm before the Orders took effect. *See id.* (determining that the public health orders failed to satisfy strict scrutiny in part because "[n]ot only is there no evidence that the applicants have contributed to the spread of COVID-19 but there are many other less restrictive rules that could be adopted to minimize the risk").

The Orders' discriminatory impact on gun and ammunition shops also emphasizes that they were *not* "the least restrictive means available to further a compelling government interest." *Berger*, 569 F.3d at 1050. Just like in *Roman Catholic Diocese*, the Orders allowed "essential" businesses like bicycle repair shops and hardware stores to remain open but forced venues that provide access to core fundamental liberties—in this case, Second Amendment rights—to close. *See Roman Cath. Diocese*, 141 S. Ct. at 69 (Gorsuch, J., concurring) (noting that New York City's designation of "essential businesses" included hardware stores and bicycle repair shops, among other businesses). In this somewhat unique scenario where governments are grappling with a global pandemic, the risk of gun shops, ammunition shops, and firing ranges remaining open have nothing to do with the dangers typically associated with firearms. Instead, just as in the recent Supreme Court COVID cases involving religious liberty, all activities open to the public in the County essentially pose the same risk of furthering the spread of COVID by way of facilitating continued public interaction. *See Tandon*, 141 S. Ct. at 1296 ("Comparability is concerned with the risks various activities pose, not the reasons why people gather."). And there is nothing in the record suggesting that gun shops, ammunition shops, or firing ranges posed a higher risk of spreading COVID than, say, bicycle shops or hardware stores.

The governments' designation of "essential" businesses and activities reflects a government-imposed devaluation of Second Amendment conduct in relation to various other non-Constitutionally protected activities during times of crises, irrespective of any of the unique dangers presented by firearms, ammunition, or firing ranges. Such devaluation directly undermines the strong protections the Constitution was designed to protect, even *through* the "various crises of human affairs." *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 415 (1819) (emphasis omitted). The Orders' discriminatory denigration of fundamental liberties reveals that they are not the least restrictive means available, further demonstrating their inability to survive strict scrutiny. *Roman Cath. Diocese*, 141 S. Ct. at 67.

Ultimately, the issue boils down to the County's designation of "essential" versus "non-essential" businesses and activities. While courts should afford some measure of deference to local policy determinations, "the enshrinement of constitutional rights necessarily takes certain policy choices off the table." *Heller*, 554 U.S. at 636. When a government completely bans all acquisition of firearms and ammunition by closing gun shops, ammunition shops, and firing ranges, it's one of those off-limits policy choices squarely contemplated by *Heller*. *See id.* at 630. The Orders cannot satisfy strict scrutiny.

e. The Orders Also Fail Intermediate Scrutiny.

Even if strict scrutiny did not apply, the Orders would fail to satisfy intermediate scrutiny. "To satisfy intermediate scrutiny, the government's statutory objective must be significant, substantial, or important, and there must be a reasonable fit between the challenged law and that objective." *Mai*, 952 F.3d at 1115 (citation and internal quotation marks omitted). "In considering whether [the

challenged law] withstands intermediate scrutiny, we must first define the governmental interest served by [the challenged law], and determine whether it is substantial." *Jackson*, 746 F.3d at 968–69.

Here, as noted above, the Orders' stated intent was to "ensure that the maximum number of persons stay in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the maximum extent possible." The overall intent of slowing the spread of COVID-19 is a substantial government interest, *see Roman Cath. Diocese*, 141 S. Ct. at 67, so the Orders satisfy the first prong of intermediate scrutiny.

But Appellants have failed to show that the Orders reasonably fit the challenged objective. This circuit has sometimes loosely applied the "reasonable fit" prong and only required that the challenged regulation promote a substantial government interest that would be achieved less effectively absent the regulation. *See, e.g.*, *Mai*, 952 F.3d at 1116 (citation omitted); *United States v. Singh*, 979 F.3d 697, 725 (9th Cir. 2020) (citation omitted). Still, a majority of judges in a recent en banc panel also reaffirmed that reasonable fit in the Second Amendment context is not "less exacting than [our] application of the standard in other kinds of cases." *Duncan v. Bonta*, 19 F.4th 1087, 1138 (9th Cir. 2021) (en banc) (Berzon, J., concurring). Regardless, there are several related principles at play here that nonetheless reveal that the government has failed to meet even the more lenient version of the "fit" requirement that we have sometimes applied.

The relevant related principles can be grouped into two main categories. First, the government "must affirmatively establish the reasonable fit we require." *See Bd. of Trs. of*

State Univ. of N.Y. v. Fox, 492 U.S. 469, 480 (1989). "This burden is not satisfied by mere speculation or conjecture," *Edenfield v. Fane*, 507 U.S. 761, 770 (1993), but by "substantial evidence" that the challenged restrictions will alleviate the harm. *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 666 (1994). Though this court has not yet addressed the requisite threshold for "substantial evidence," it has, when applying intermediate scrutiny, repeatedly relied on at least *some* evidence or explanation from the government that purportedly relates to and supports the restriction of Second Amendment rights in particular. *See, e.g., Jackson*, 746 F.3d at 965 (discussing evidence related to the particular dangers associated with gun ownership in support of the city's gun regulation).[23] Second, when applying intermediate scrutiny, courts must consider "less-burdensome alternatives," *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 417 n.13 (1993); and evaluate "exemptions and inconsistencies" that undercut the reasonableness of the purported fit. *See Greater New Orleans Broad. Assn., Inc. v. United States*, 527 U.S. 173, 190 (1999).[24]

---

[23] *See also Mai*, 952 F.3d at 1117; *Pena*, 898 F.3d at 980; *Silvester*, 843 F.3d at 828; *Fyock v. Sunnyvale*, 779 F.3d 991, 1000 (9th Cir. 2015); *Chovan*, 735 F.3d at 1140.

[24] While Board of Trustees of State University of New York, Edenfield, Turner Broadcasting System, Inc., City of Cincinnati, and Greater New Orleans Broadcasting Association, Inc. address First Amendment challenges, as noted above, First Amendment principles inform the application of intermediate scrutiny in the Second Amendment context—in fact, that's where the "reasonable fit" test originally came from. *See Mai*, 974 F.3d at 1103 (VanDyke, J., dissenting from the denial of rehearing en banc) (describing the history of our Second Amendment intermediate scrutiny test). Moreover, our sister circuits have considered less burdensome alternatives as relevant to a proper analysis of restraints imposed on Second Amendment rights.

Applying these principles, the County has failed to meet its burden here. Appellees omit *any* evidence or argumentation suggesting that the closure of gun shops, ammunition shops, and firing ranges stems the spread of COVID any more than the closure of bike shops, hardware stores, and golfing ranges. Instead, Appellees' one-sentence justification on appeal of the Orders' "reasonable fit" is that "social isolation is considered useful as a tool to control the spread of pandemic viral infections." But this carte-blanche rationale—that has nothing to do with the actual fundamental right at issue—is riddled with exemptions and inconsistencies. If social isolation is the paramount concern, why allow bicycle shops, hardware stores, and golfing ranges to remain open? As noted above, it ultimately boils down to the government's designation of "essential" and "non-essential" businesses—but nowhere has the government here explained why gun stores, ammunition stores, and firing ranges are "non-essential" businesses while bicycle shops, hardware stores, and golfing ranges are "essential."

Not only did Appellees fail to provide *any* evidence or explanation suggesting that gun shops, ammunition shops, and firing ranges posed a greater risk of spreading COVID-19 than other businesses and activities deemed "essential," but they also failed to provide any evidence that they considered less restrictive alternatives for the general public. It's not as if alternatives were unavailable: the County eventually utilized one such alternative for those who had purchased firearms before March 20 by allowing receipt of those pre-purchased firearms on an appointment-only basis. It declined to extend this option to those who had not yet

---

See, e.g., Heller v. District of Columbia, 801 F.3d 264, 277–78 (D.C. Cir. 2015); *Ezell v. City of Chicago*, 651 F.3d 684, 709 (7th Cir. 2011).

purchased a firearm by March 20, however, without any explanation. Indeed, the only evidence in the record that specifically pertains to the actual Second Amendment rights at issue directly undercuts the reasonableness of the fit: CISA (the federal agency) had specifically identified "workers supporting the operation of firearm or ammunition . . . retailers . . . and shooting ranges" as "essential critical infrastructure workers." If the government actually has any burden at all—which our court has repeatedly said it does, even under intermediate scrutiny—then at a minimum it means that the government must provide *some* explanation that pertains to the specific risks associated with the fundamental right at issue. It did not do so here, and therefore failed to meet any burden in showing a reasonable fit. Instead, it summarily devalued a fundamental right by deeming businesses essential to the exercise of that right as "non-essential," without any proffered rationale whatsoever. This cannot survive any type of heightened scrutiny where the government bears some burden.

CONCLUSION

The district court erred in determining that *Jacobson* applied to Appellants' Second Amendment claim, and in the alternative, that intermediate scrutiny applied. It also erred in determining that the Orders survived even intermediate scrutiny. We therefore reverse the district court's order granting Appellees' motion to dismiss and remand for further proceedings.

KLEINFELD, Circuit Judge, concurring:

I concur in the result, but write separately for two reasons. First, we need not reach the question whether strict scrutiny applies, so I would not. While strict scrutiny may be appropriate, as the majority concludes, nevertheless we should not make more law than is necessary to decide the case. Second, I wish to expand upon the absence of justification in the record for what the County did.

The Supreme Court and we have held that rational basis review is not appropriate to a statute (let alone a mere edict by a county official, as here) challenged under the Second Amendment.[1] We and other circuits have used First Amendment analysis as a guide.[2] In *Packingham v. North Carolina*,[3] a recent First Amendment challenge to a prohibition against a registered sex offender accessing social media sites, the Supreme Court explained that "to survive intermediate scrutiny, a law must be 'narrowly tailored to serve a significant governmental interest.'"[4] The fit between the governmental objective and the prohibition need not be perfect, but it must be reasonable.[5] To survive intermediate scrutiny, the government cannot "burden substantially more

[1] *See District of Columbia v. Heller*, 554 U.S. 570, 628 n.27; *Duncan v. Bonta*, __ F.4th __, (9th Cir. Nov. 30, 2021).

[2] *See Duncan v. Bonta*, __ F.4th __, (9th Cir. Nov. 30, 2021); *Drummond v. Robinson Twp.*, 9 F.4th 217, 226 (3d Cir. 2021); *Kanter v. Barr*, 919 F.3d 437, 448 (7th Cir. 2019); *United States v. Chester*, 628 F.3d 673, 682 (4th Cir. 2010).

[3] 137 S. Ct. 1730 (2017).

[4] *Packingham*, 137 S. Ct. at 1736 (internal citation omitted).

[5] *See Duncan v. Bonta*, __F.4th __, (9th Cir. Nov. 30, 2021).

speech than is necessary to further the government's legitimate interests."[6] A valid governmental interest (in *Packingham*, keeping child molesters from using Facebook and Twitter to find new victims) is not adequate to insulate the restriction from all constitutional protections.[7] The State must "me[e]t its burden to show that th[e] sweeping law is necessary or legitimate to serve that purpose."[8] While the government's burden of proof is not "unnecessarily rigid," the evidence in the record must still "fairly support" the government's position.[9] Of course, "we defer to reasonable legislative judgments."[10] In the case before us, the challenged order is not a "legislative judgment," merely an edict by a subordinate official within the County executive, presumably entitled to less deference than a legislative judgment.

Thus, regardless of whatever deference this edict may receive, the County bears the burden of establishing a "reasonable fit" between its purpose of slowing the spread of the virus and its prohibition of sales of and practice at gun ranges with guns and ammunition. That purpose is legitimate, but the legitimacy of the purpose is not enough to abridge a constitutional right. The County must show that

---

[6] *Packingham*, 137 S. Ct. at 1736. (internal quotation marks and citation omitted).

[7] *See Id.*

[8] *Id.* at 1737.

[9] *Duncan*, __ F.4th at __ (internal quotation marks and citation omitted).

[10] *Id.*

the evidence in the record establishes a reasonable fit of the edict to the legitimate purpose.

Since the constitutional challenge in this case was dismissed for failure to state a claim upon which relief could be granted, for purposes of decision we must proceed on the basis of the facts averred in the complaint, together with documents incorporated by reference or judicially noticed.[11] The challenge arises from a series of orders issued by Ventura County's Public Health Medical Director and Health Officer prohibiting the acquisition of firearms and ammunition from licensed dealers, even if purchasers had already paid for them, and prohibiting the operation of firing ranges necessary for training and practice in the safe use of firearms.[12]

The structure of the orders was to require everyone in the County to stay within their residence and to require all businesses to close and to prohibit all travel, but with a series of exceptions. Generally in the Anglo-American tradition, everything is permitted except what is expressly prohibited. The Health Officer's orders instead prohibited everything except what they expressly permitted. The scope of the exceptions is thus critical to the orders' constitutionality.

The exceptions included leaving one's residence for outdoor activities such as bicycling and later golfing, but not shooting at outdoor gun ranges. Delivery of any "household consumer products" was excepted, but not delivery, even at the door of a licensed dealer, of guns or ammunition.

[11] *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018).

[12] First Amended Complaint ¶ 50–55.

"Hardware stores" were excepted, but apparently not if the hardware consisted of firearms or ammunition. Subsequent emendations to the orders allowed people to shop in person for cars and bicycles, and to take possession of firearms previously purchased and paid for. The parties do not disagree that gun stores and shooting ranges were ordered closed, on pain of criminal penalties,[13] during the periods at issue.

There is no evidence whatsoever in the record to show why the particular inclusions and exceptions relating to firearms, ammunition, and shooting ranges reasonably fit the purpose of slowing the spread of the COVID-19 virus. The only document the County points to as justification is the edict itself, in which its Health Officer recites in the "Whereas" clauses that "social isolation is considered useful" for this purpose. The County provides no evidence and no justification for why bicycles could be purchased and delivered, for example, but firearms could not even be picked up at the storefront, or for why such outdoor activities as walking, bicycling, and golfing were allowed, but acquiring and maintaining proficiency at outdoor shooting ranges was not.

The State of California Public Health Officer had made an exception to the statewide order confining people to their residences for workers needed to "maintain continuity of operations of the federal critical infrastructure sectors" of the economy.[14] The federal government had advised that gun stores should be treated as "essential critical infrastructure," but the County offers no justification whatsoever, let alone

[13] *Id.* at ¶ 48–49.

[14] *Id.* at ¶ 37–39.

evidence, for why it did not so treat gun stores, as the State exception and federal advisory memorandum did. The federal guidance, ignored without any stated reason by the County, deemed "workers supporting the operation of firearm or ammunition product manufacturers, retailers, importers, distributors, and shooting ranges" to be within the "critical infrastructure workforce."

The dramatically broad County Health Officer's edict established that anyone in the County could be arrested and put in jail for myriad activities outside the home or for engaging in commercial transactions other than those explicitly excepted from the edict, yet the County offers no evidence nor even any argument for the apparently arbitrary list of exclusions. Nor does the County make any effort, not by presenting evidence, nor even by presenting argument, for why such constitutionally protected activities, whether public speech, or going to church, or purchasing and practicing with firearms and ammunition, were simply banned, instead of accommodated with a reasonable fit to the purpose of slowing the spread of the virus. The government's argument seems to be that so long as it satisfies the first step of intermediate scrutiny, showing some legitimate purpose, it has no burden under the second step, to establish a reasonable fit with that purpose. If that were correct, the County could order the closure of Mexican restaurants but make an exception for French restaurants, because the arbitrariness of that distinction would not matter any more than the distinction between bicycling and shooting at outdoor gun ranges. Such arbitrariness is not the law.

I therefore concur in reversing the district court. If, under intermediate scrutiny in *Packingham*,[15] a child molester cannot be prohibited from accessing social media sites, because such a prohibition excessively restricts access to legitimate speech,[16] then *a fortiori* a legitimate gun purchaser cannot have his constitutional right to acquire firearms and ammunition, and to develop and maintain proficiency with them at outdoor shooting ranges, suspended indefinitely under a "broad stroke"[17] prohibition riddled with exceptions for other quite similar activities, without more from the government other than the assertion that "the law must be this broad"[18] to serve its purpose. On the record before us, all we have is a series of orders allowing some retailing of hardware and other consumer products but not firearms or ammunition, and allowing some outdoor activities such as golfing and bicycling but not shooting at outdoor firing ranges. Nothing in the record explains why. The County has simply neglected to make a record that could justify its actions. Neither pandemic nor even war wipes away the Constitution.[19]

[15] *Packingham*, 137 S. Ct. at 1737.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *See, e.g.*, *Hamdi v. Rumsfeld*, 542 U.S. 507, 536 (2004).

VANDYKE, Circuit Judge, concurring:

I agree wholeheartedly with the majority opinion, which is not terribly surprising since I wrote it. But I write separately to make two additional points. The first is simply to predict what happens next. I'm not a prophet, but since this panel just enforced the Second Amendment, and this is the Ninth Circuit, this ruling will almost certainly face an en banc challenge. This prediction follows from the fact that this is *always* what happens when a three-judge panel upholds the Second Amendment in this circuit. *See, e.g.*, *Young v. Hawaii*, 896 F.3d 1044, 1048 (9th Cir. 2018), *on reh'g en banc*, 992 F.3d 765 (9th Cir. 2021) (en banc) (overturning the three-judge panel); *Peruta v. Cnty. of San Diego*, 742 F.3d 1144, 1147 (9th Cir. 2014), *on reh'g en banc*, 824 F.3d 919 (9th Cir. 2016) (en banc) (same); *Duncan v. Becerra*, 970 F.3d 1133, 1138 (9th Cir. 2020), *on reh'g en banc sub nom. Duncan v. Bonta*, 19 F.4th 1087 (9th Cir. 2021) (en banc) (same). Our circuit has ruled on dozens of Second Amendment cases, and without fail has *ultimately* blessed *every* gun regulation challenged, so we shouldn't expect anything less here. *See Duncan*, 19 F.4th at 1165 (VanDyke, J., dissenting).

My second point is related to the first. As I've recently explained, our circuit can uphold any and every gun regulation because our current Second Amendment framework is exceptionally malleable and essentially equates to rational basis review. *See id.* at 1162–63; *Mai v. United States*, 974 F.3d 1082, 1101 (9th Cir. 2020) (VanDyke, J., dissenting from the denial of rehearing en banc) ("Particularly in [the Second Amendment] context, we have watered down the 'reasonable fit' prong of intermediate scrutiny to little more than rational basis review."). Our court normally refers to our legal test as a two-step inquiry,

see United States v. Chovan, 735 F.3d 1127, 1136 (9th Cir. 2013), although it may be better understood as a "tripartite binary test with a sliding scale and a reasonable fit"—a test that "only a law professor can appreciate." *Rhode v. Becerra*, 445 F. Supp. 3d 902, 930 (S.D. Cal. 2020). The complex weave of multi-prong analyses embedded into this framework provide numerous off-ramps for judges to uphold any gun-regulation in question without hardly breaking a sweat. *See Duncan*, 19 F.4th at 1164–65 (VanDyke, J., dissenting).

Given both of these realities—that (1) no firearm-related ban or regulation ever ultimately fails our circuit's Second Amendment review, and (2) that review is effectively standardless and imposes no burden on the government—it occurred to me that I might demonstrate the latter while assisting my hard-working colleagues with the former. Those who know our court well know that all of our judges are very busy and that it's a lot of work for any judge to call a panel decision en banc. A judge or group of judges must first write a call memo, and then, if the en banc call is successful, the en banc majority must write a new opinion. Since our court's Second Amendment intermediate scrutiny standard can reach any result one desires, I figure there is no reason why I shouldn't write an alternative draft opinion that will apply our test in a way more to the liking of the majority of our court. That way I can demonstrate just how easy it is to reach any desired conclusion under our current framework, and the majority of our court can get a jump-start on calling this case en banc. Sort of a win-win for everyone. To better explain the reasoning and assumptions behind this type of analysis, my "alternative" draft below will contain footnotes that offer further elaboration (think of them as "thought-bubbles"). The path is well-worn, and in a few easy steps any firearms regulation, no matter how

draconic, can earn this circuit's stamp of approval. Here goes:

BACKGROUND

> The rapid onset of the COVID-19 pandemic disrupted every facet of life across the globe and has claimed millions of lives. In the early days of the pandemic, when information was scarce and panic was setting in, governments were forced to take immediate action. Accordingly, the County of Ventura issued a series of health orders ("Orders") to slow the spread of the disease. These Orders, among other things, required the immediate closure of all non-essential businesses, including firearm stores and firing ranges. The county continually updated and modified the Orders, and allowed these businesses to reopen as soon as it was safe to do so. All told, firearm stores and ranges were closed for 48 days. During that time, Plaintiffs sued the county, alleging that these Orders impermissibly burdened their Second Amendment rights.

DISCUSSION

A. Legal Framework

> The Second Amendment states: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. In the leading case on the Second Amendment, the

Supreme Court invalidated a District of Columbia regulation that banned possession of handguns in the home and required other firearms to generally be kept "unloaded and disassembled or bound by a trigger lock or similar device." *District of Columbia v. Heller*, 554 U.S. 570, 575 (2008). Two years later, the Supreme Court incorporated the Second Amendment against the states and invalidated a Chicago handgun possession ban similar to the one in *Heller*. *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010). But in invalidating the challenged regulations, both *Heller* and *McDonald* explained that the rights established by the Second Amendment are "not unlimited." *Heller*, 554 U.S. at 595; *McDonald*, 561 U.S. at 786.[1]

Our circuit, like most of our sister circuits, have discerned from *Heller* and *McDonald* a two-step framework for analyzing Second Amendment claims. At

[1] We really like this "not unlimited" language from *Heller*, and cite it often and enthusiastically. *See, e.g.*, *Young v. Hawaii*, 992 F.3d 765, 782 (9th Cir. 2021) (en banc); *Mai v. United States*, 952 F.3d 1106, 1113 (9th Cir. 2020); *Peruta v. Ctny. of San Diego*, 824 F.3d 919, 928 (9th Cir. 2016) (en banc); *Silvester v. Harris*, 843 F.3d 816, 819 (9th Cir. 2016); *Silvester*, 843 F.3d at 829 (Thomas, C.J., concurring); *Chovan*, 735 F.3d at 1133; *United States v. Vongxay*, 594 F.3d 1111, 1115 (9th Cir. 2010). One might conclude it is the driving force in our circuit's Second Amendment jurisprudence.

step one, our court looks to see if the challenged law burdens conduct protected by the Second Amendment by examining the "historical understanding of the scope of the right." *Silvester*, 843 F.3d at 821 (quoting *Heller*, 554 U.S. at 625). If the law is outside the historical scope of the Second Amendment or falls within "presumptively lawful regulations," the law is upheld. *Id.*

If the law does implicate conduct protected by the Second Amendment, then the court must continue to step two and determine which level of scrutiny to apply. *See Chovan*, 735 F.3d at 1136. The appropriate level of scrutiny depends on "(1) 'how close the law comes to the core of the Second Amendment right,' and (2) 'the severity of the law's burden on the right.'" *Id.* at 1138 (quoting *Ezell v. City of Chicago,* 651 F.3d 684, 703 (7th Cir. 2011)). A law that destroys the Second Amendment right is unconstitutional under any level of scrutiny; a law that both implicates the core of the Second Amendment and severely burdens that right is subject to strict scrutiny;[2] all other laws are subject to intermediate scrutiny. *Young*, 992 F.3d at 784.

[2] We refer to strict scrutiny as a theoretical matter—a thought-experiment, really. Our court has never ultimately applied strict scrutiny to any real-life gun regulation.

B. Application

a. Step One

We begin by first deciding if the Orders burden conduct historically protected by the Second Amendment. Such historical analysis is not easy, "and the courts of appeals have spilled considerable ink in trying to navigate the Supreme Court's framework." *Pena v. Lindley*, 898 F.3d 969, 976 (9th Cir. 2018). Yet history suggests that delays in taking possession of a firearm was not considered a substantial burden on the Second Amendment:

> Before the age of superstores and superhighways, most folks could not expect to take possession of a firearm immediately upon deciding to purchase one. As a purely practical matter, delivery took time. Our 18th and 19th century forebears knew nothing about electronic transmissions. Delays of a week or more were not the product of governmental regulations, but such delays had to be routinely accepted as part of doing business.

Silvester, 843 F.3d at 827. Even with this history as a guide, however, we are unable to definitively rule on the historical pedigree

of the county's Orders. The parties did not brief the historical contours of regulations like these, and for good reason. The complexity and novelty of the challenges raised by COVID-19 are not easily mapped onto 18th or 19th century practices and understandings.

Therefore, we elect to follow the "well-trodden and 'judicious course'" of assuming, rather than deciding, that the regulation at hand burdens conduct protected by the Second Amendment. *Pena*, 898 F.3d at 976 (quoting *Woollard v. Gallagher*, 712 F.3d 865, 876 (4th Cir. 2013)); *see also Mai*, 952 F.3d at 1114–15; *Fyock v. City of Sunnyvale*, 779 F.3d 991, 997 (9th Cir. 2015).[3]

[3] Here's the deal: Whenever we think the history helps us in upholding the challenged regulation, we're happy to rely on it in step one of our test. *See, e.g.*, *Young*, 992 F.3d at 784–826. But most of the time the history either doesn't help us uphold the gun regulation, is indeterminate, or is just really hard to evaluate. So usually we just skip over step one of our "two-step" test by assuming the challenged regulation burdens Second Amendment-protected conduct. But that's okay, because the real beauty of our two-step test is its amazing flexibility at the various stages of step two in balancing the government's asserted interest versus the claimed impact on the "core" of the Second Amendment.

b. Step Two

Assuming without deciding that the Orders burden conduct protected by the Second Amendment, we must now determine which level of scrutiny applies. Again, this is determined by looking at "(1) 'how close the law comes to the core of the Second Amendment right,' and (2) 'the severity of the law's burden on the right.'" *Chovan*, 735 F.3d at 1138 (quoting *Ezell,* 651 F.3d at 703). We have explained that intermediate scrutiny is appropriate "when a challenged regulation does not place a substantial burden on Second Amendment rights." *Silvester*, 843 F.3d at 827.[4] Here, we can't say the Orders imposed a *severe* burden on anyone's ability to exercise their

[4] It is important to recognize that all the real work in our Second Amendment test is done right here. First, notice how much discretion this test gives us judges! There is so much flexibility in deciding whether anything short of an outright permanent ban (which nobody is dumb enough to enact anymore) places a "severe burden" on the Second Amendment. We can always point to stuff that *isn't* banned in concluding this particular regulation isn't a "substantial burden." And second, once we've concluded that a challenged regulation does *not* place a "substantial burden on Second Amendment rights," it's really game over. A regulation that we've already determined does not substantially burden the Second Amendment can be upheld easy-peasy under our watered-down intermediate scrutiny test.

Second Amendment rights.[5] The Orders only *temporarily* delayed the sale of firearms and use of firearms at firing ranges, which is a far cry from the complete and permanent ban of handguns as invalidated in *Heller*.[6] Moreover, we have already upheld government regulations that result in the temporary delay of an individual's ability to take possession of firearms under intermediate scrutiny. *See Silvester*, 843 F.3d at 827. And here, as in *Silvester*, "[t]he regulation does not prevent, restrict, or place any conditions on how guns are stored or used *after* a purchaser takes possession." *Id.* (emphasis added).

Finally, a delay in acquiring a firearm is hardly a foreign concept to California residents. As *Silvester* explained, California generally requires firearm purchasers to undergo a background check, in which the "California DOJ has the authority to delay the delivery of a firearm for up to thirty days in order to complete the background check."

[5] "Severe" is a very strong word, and a real workhorse when *italicized*.

[6] Another one of our favorite tricks. Once you frame *Heller* as speaking *only* to complete and total bans, it's easy to side-step its holding. All a judge has to do is pretend the Supreme Court would have allowed anything short of DC's drastic prohibition in *Heller*, instead of viewing *Heller* as easily correcting an especially egregious constitutional violation.

Id. at 825 (citing Cal. Penal Code § 28220(f)).[7]

We conclude therefore that the Orders do not severely burden any Second Amendment right implicating the core of the Second Amendment, so intermediate scrutiny is appropriate.[8]

c. Intermediate Scrutiny

Applying intermediate scrutiny, we require "(1) the government's stated objective to be significant, substantial, or important; and (2) a reasonable fit between the challenged regulation and the asserted objective." *Chovan*, 735 F.3d at 1139.

The first prong is certainly met here.[9] The Supreme Court has stated that

[7] Sure, the typical delay in *Silvester* was much shorter than the almost two-month delay here. But this is merely a difference in *degree*, not *kind*, and we don't think the difference is so "*severe*" as to merit strict scrutiny.

[8] Whew. Hard work done. It's all downhill from here!

[9] The first prong is always met in Second Amendment cases. Guns are dangerous, after all, so the government's interest in ameliorating such danger is always important. At first we were worried this case might be a problem, because the regulations here don't really have any nexus to the dangerousness of guns. But COVID-19 is dangerous too, so that substitutes in nicely.

"[s]temming the spread of COVID-19 is unquestionably a compelling interest," *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020), and petitioners do not claim otherwise. What petitioners *do* challenge is that the Orders are not a reasonable fit with the stated objective of slowing the spread of COVID-19, since other stores remained open while firearm stores and ranges were closed.

But this argument misconstrues intermediate scrutiny. "The [intermediate scrutiny] test is not a strict one. We have said that intermediate scrutiny does not require the least restrictive means of furthering a given end."[10] *Silvester*, 843 F.3d at 827 (internal citation and quotation marks omitted). The State is

[10] We've really gotten a lot of mileage out of this concept. One might think that because the "first prong" (government's important interest) will *always* be met in Second Amendment cases (because guns are inherently dangerous), that the "reasonable fit" part of the test would take on special significance. But thankfully the opposite is true. We've been able to water down the "fit" part of the test for Second Amendment cases to such an extent that many of our judges have been forced to distance our Second Amendment case law from the First Amendment case law from which it was supposedly borrowed. *See Duncan*, 19 F.4th at 1116 (Graber, J., concurring) ("To be sure, the First Amendment and the Second Amendment differ in many important respects (including text and purpose), and the analogy is imperfect at best.").

required to show only that the regulation "promotes a substantial government interest that would be achieved less effectively absent the regulation."[11] *Id.* at 829 (quoting *Fyock*, 779 F.3d at 1000).

The Orders, in preventing employees and customers from interacting indoors during the COVID-19 pandemic, clearly promote the county's interest in slowing the spread of COVID-19 more than if no such Orders were issued. Plaintiffs argue that Ventura County failed to meet this standard because it did not offer any evidence connecting the spread of COVID-19 to firearm retailers or firing ranges. But this again places too great a burden on the county. Localities "must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems," *Jackson*, 746 F.3d at 969–70 (internal citation omitted), and this is even more true when faced with a global pandemic. Especially in the beginning days of the COVID-19 pandemic, the type of hard evidence Plaintiffs demand was simply not available, or at a minimum, rapidly evolving.

[11] I know this sounds a lot like rational basis review. After all, if a government interest would be "achieved [*more*] effectively *absent* the [challenged] regulation," it's hard to see how that regulation would survive even rational basis scrutiny. But trust us, this is heightened scrutiny. So very heightened.

Plaintiffs' demands are also inconsistent with our case law. When officials are forced to "'act in areas fraught with medical and scientific uncertainties,' their latitude 'must be especially broad.'" *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1614 (2020) (Roberts, C.J., concurring) (quoting *Marshall v. United States*, 414 U.S. 417, 427 (1974)). But this is not to say Ventura County acted irrationally. There is a clear and straightforward logic underlying the Orders: limit to the extent possible any interactions that could facilitate the spread of COVID-19. These Orders reflected the then-current scientific understanding of COVID-19, as reflected in the social distancing requirements and the closing of non-essential businesses. And this court has repeatedly allowed common-sense to undergird a government's evidence when justifying a regulation in the Second Amendment context. *See, e.g.*, *Chovan*, 735 at 1135 (citing approvingly the Seventh Circuit for upholding a challenged regulation "[i]n light of '[b]oth *logic* and data'" (quoting *United States v. Skoien*, 614 F.3d 638, 642 (7th Cir. 2010))) (emphasis added); *Silvester*, 843 F.3d at 828 (concluding that the empirical studies available supported "the common sense

understanding" behind the waiting period regulation at issue).[12]

* * *

Like every locality in the United States, Ventura County was forced to rapidly respond to an unprecedented pandemic. As the death toll for its citizens continued to rise, the county temporarily closed firearm stores and firing ranges, but lessened, and then eventually withdrew, those restrictions when the pandemic allowed. Plaintiffs may disagree with Ventura County's decisions, but it is not our job—now with the benefit of hindsight—to dictate what Orders we would have found best. Local officials "should not be subject to second-guessing by an 'unelected federal judiciary,' which lacks the background, competence, and expertise to assess public health and is not accountable to the people." *S. Bay United Pentecostal Church*, 140 S. Ct. at 1614 (Roberts, C.J., concurring) (citation omitted).

[12] Again, it doesn't matter much what we say here. Once we're allowed to effectively balance competing interests under our Second Amendment intermediate scrutiny, it's so easy justifying a regulation that we could easily just delegate this part of the opinion to our interns.

> For these reasons, we affirm the district court's dismissal of Plaintiffs' complaint for failure to state a claim.

You're welcome.

Becoming A DOJ Certified Instructor And Maintaining Current DOJ Certified Instructor Certification

Effective January 1, 2015, all DOJ Certified Instructor applicants are required to have a valid Certificate of Eligibility (COE) and must obtain a COE prior to submitting an application as a DOJ Certified Instructor.

The Certificate of Eligibility instructions and application is available at Certificate of Eligibility Please note that COEs must be renewed annually. The COE processing time is approximately 4 – 8 weeks.

Once you have obtained your COE number from the Bureau of Firearms, you can apply to become a DOJ Certified Instructor by completing a Firearm Safety Certificate (FSC) Program DOJ Certified Instructor application (form BOF 037) available at https://oag.ca.gov/firearms/formsor apply online through the FSC Certified Instructor

Firearm Certification System athttps://fcs.doj.ca.gov/login-form. **Please note that a DOJ Certified Instructor's certification is valid for five years provided he or she maintains a valid COE. The processing time for manual applications is up to four weeks and online applications is 3-4 business days.**

To renew DOJ Certified Instructor certification a FSC Program DOJ Certified Instructor application (form BOF 037) available athttps://oag.ca.gov/firearms/formsmust be submitted with the renewal box checked or renewing online through the FSC Certified Instructor Firearm Certification System athttps://fcs.doj.ca.gov/login-formand accepting the Conditions of Use.

Firearm Safety Certificate Program

Effective January 1, 2015, the Handgun Safety Certificate program was replaced with the Firearm Safety Certificate (FSC) program. Under the FSC program, requirements that previously applied to **handguns only** now apply to all firearms (handguns and long guns), unless exempt. A list of exemptions is available on this website.

A valid Handgun Safety Certificate can still be used to purchase/acquire **handguns only** until it expires. For long gun purchases/acquisitions made January 1, 2015, and thereafter, an FSC will be required. Once an FSC is obtained, it can be used for both handgun and long gun purchases/acquisitions.

FSCs are acquired by taking and passing a written test on firearm safety, generally at participating firearms dealerships and private firearms training facilities. A Firearm Safety Certificate Study Guideto help individuals prepare for the FSC test is available for viewing/downloading from this website. A Firearm Safety webinar is also available for viewing or download on theVideos page.

The firearm safety demonstration protocols and DOJ Certified Instructor standards have been established and implemented by DOJ. An explanation of the firearm safety demonstration can be found starting on page 12 of the Firearm Safety Certificate Study Guide.

The following forms and publications are available at https://oag.ca.gov/firearms/forms

Forms

Update: These forms now contain fields you can fill in on-screen by first downloading and saving the form to your computer.

- Comparable Entity Application (BOF 946)
- DOJ Certified Instructor Application (BOF 037)
- Safe Handling Demonstration Affidavit (BOF 039)

Publications

- FSC Manual (revised June 2020)
- FSC Study Guide (revised June 2020)
- FSC Study Guide-Spanish (revised June 2020)

For additional information regarding the FSC program, please review the following or send an email to boffscprogram@doj.ca.gov:

- Frequently Asked Questions

Specified Training Organizations In Firearms Safety

Organizations Specified by Penal Code section 31635, subdivision (b) as providing Acceptable Firearms Safety Training.

Penal Code section 31635, subdivision (b), authorizes Department of Justice to certify individuals possessing a training certificate from an organization enumerated under this subdivision to be a DOJ Certified Instructor.

The training organizations specified under Penal Code section 31635, subdivision (b) are:

1. Department of Consumer Affairs, State of California-Firearm Training Instructor.
2. Director of Civilian Marksmanship, Instructor or Rangemaster.
3. Federal Government, Certified Rangemaster or Firearm Instructor.
4. Federal Law Enforcement Training Center, Firearm Instructor Training Program or Rangemaster.
5. United States Military, Military Occupational Specialty (MOS) as marksmanship or firearms instructor. Assignment as Range Officer or Safety Officer is not sufficient.
6. National Rifle Association-Certified Instructor, Law Enforcement Instructor, Rangemaster, or Training Counselor.
7. Commission on Peace Officer Standards and Training (POST), State of California-Firearm Instructor or Rangemaster.
8. Authorization from a State of California accredited school to teach a firearm training course.

Comparable Training In Firearms Safety

Entities Recognized by DOJ as Providing Comparable Firearm Safety Training to Those Entities Specified by Penal Code section 31635, subdivision (b).

Penal Code section 31635, subdivision (b) authorizes the California Department of Justice (DOJ) to recognize entities which provide firearms safety training comparable to the entities specified within that subdivision. Individuals possessing a Certificate of Completion from any of the entities so recognized by DOJ may apply to be a DOJ Certified Instructor.

The entities recognized by DOJ as providing firearms safety training comparable to the entities specified by Penal Code section 31635, subdivision (b) are:

Name	Owner	City and State	Phone Number
2nd Amendment Sports		Bakersfield	(661) 323-4512
29 Outdoor Gear	Jerome Kunzman	American Canyon, CA	(510) 376-0303
Baptist Security Training	Frazier Baptist	Vacaville	(707) 386-2689
Basic Gun Safety		Huntington Beach	(714) 864-0203
BullsEyeTactical Firearms Training		Castella	(530) 235-0721
Burton Lewis Agency, LLC	Glenn Burton Lewis	Elk Grove, CA	(916) 834-9728
California Firearms Safety School		San Francisco & Monterey	(415) 816-0099
CCW USA Firearms Training		Santee	(619) 871-9834
Cal Guns Training	Shawn Lindstrom	Ventura, CA	(805) 765-1486

Coast Tactical Training	Scott Jones	Orange, CA	(562) 583-1790
Darrell's Shooting Sports		San Juan Capistrano	(949) 599-4148
Defensive Accuracy		Lodi	(408) 687-3791
Dobbs Firearm Training		Suisun City	(888) 486-0250
Double Tap Training		Granada Hills	(818) 363-1777
Down Range Indoor Training Center	William Clark	Chico	(530) 896-1992
Fast Response Security, Inc.	Richard Jones	California City	(661) 775-5650
Firearms Training Associates		Yorba Linda	(714) 701-9918
Firearms Training Institute		San Jose	(408) 506-1884
First Priority Security Consulting LLC	Keith Brown	Tracy	(510) 736-4333
Five Star Firearms and Training		Truckee	(530) 587-5239
Friedman Handgun Training	Peter Friedman	Pleasant Hill, CA	(925) 818-6642
FSC Instructor Training Course	William Tidwell	Alameda or Mariposa Counties	(510) 552-4742 or (209) 878-3056
Geoffrey D Peabody	Geoffrey D Peabody	Placerville, CA	(916) 644-0991
Greenhorn Outfitter, LLC		Bakersfield	(661) 319-5426

Gun World	Daemion Garro	Burbank, CA	(818) 238-9071
The Gun Range San Diego	Veronica Garlow	San Diego, CA	(858) 573-1911
The Gun School	Danny R. Wells	Tulare, Kings, Monterey, San Luis Obispo and Santa Barbara	(559) 936-9909
Hammer Stryke Self-Reliance Training, Inc			(209) 614-1718
High Caliber Tactical	Donald Penner	Fresno, CA	(559) 903-7547
Hillside Range	Gerald Bartholomew	Los Banos	(209) 704-1708
I Can Defend	Peter Schultz	Ramona	(760) 789-0987
JLPFI- John Lewis Professional Firearms Instruction	John Lewis	Fresno, CA	(559) 349-3833
John Albert Holder	John Holder	Redwood Valley, CA	(707) 489-3380
Kings Gun Center LLC		Hanford	(559) 585-2000
KIT Group, LLC		Santa Ana	(714) 721-9233
Liberty Firearms Training	Ronald Givens	Sacramento	(916) 870-1854
Lock n Load Concealed Carry Training	David Lungren	Shingle Springs	(916) 705-2258
Marshall Security Training Academy	Edmon Muradyan	Los Angeles	(323) 660-0636

Martin B. Retting Inc.	Alex Reyes	Culver City	(310) 837-2412
Modern Warrior Gunsmithing	Jonathan Katz	Los Angeles	(818) 930-5289
NorCal Med Tac	Brannon Schell	Aptos	(831) 970-0440
Oro Jewelry and Loan	Danielle Bengtson	Oroville	(530) 533-3336
OSOS Security Services Training Facility		Mill Valley	(415) 519-3549
Pacific Outfitters	Aaron Ostrom	Eureka, CA	(707) 443-6328
Powers Security Training		Bakersfield	(661) 871-7273
Practical Firearms Training, LLC	Yvonne Arriola	French Camp, CA	(925) 487-4390
Premier Tactical Training		Fresno	(559) 779-7742
Prestigious Investigative Firearms Training Facility	Ardrick Elmore	Upland, CA	(909) 303-3153
Range Master	John Perry	San luis Obispo	(805) 545-0322
The Range		Grass Valley	(530) 273-4440
Ray Walters	Raymond Walters Jr.	Modesto, CA	(209) 613-5994
Richard E Haase Calaboose II	Richard Haase	Sacramento, CA	(916) 332-2207
Rosengarten Firearm Training	Marcelo Rosengarten	Ripon	(209) 610-1425

Rynearson Safety Training		Redding	(530) 524-3288
Safe Firearms Education	Bertrand Blanc	San Jose, CA	(408) 348-7966
Safe Gun Handling Course	Mike Green	Elk Grove	(916) 714-4867
Safe Insight LLC	Michael Cox	Lynnwood, WA	(417) 233-1444
Safety and Firearm Training Center	Gregory Raabe	4772 Stirling Street, Granite Bay, CA 95746	(916) 825-1384
Safety Firearm Training	John Holder	Ukiah	(707) 489-3380
Scott R. James II Firearm Sales & Training		Visalia	(559) 352-6982
Seale Enterprises	Chris Seale	Olivehurst	(530) 632-4101
SEC Unarmed Private Independent Security Service	Stanley Eugene Crittendon	Calexico, CA	(760) 357-0412
Shoot Safe	Jason Granados	Huntington Beach	(714) 625-1507
Shoot Safe Learning		Torrance	(310) 464-0855
Shooter's Paradise, LLC		Anne Boehm, Yuba City	(530) 673-4100
ShootSoCal Firearms Training	David Anderson	Buena Park, CA	(818) 359-7056
Showket Training	Ziyad Showket	Novato, CA	(415) 497-1983

Southern Shooting Supply		Tehachapi	(661) 823-1223
Triple Threat Solutions	Roosevelt Scott Jr.	Bakersfield, CA	(661) 374-1180
Valley Defense Consulting, Inc.	Vince Bizzini	Modesto	(209) 552-5728
Valley Gun, Inc.		Bakersfield	(661) 352-9468
Wade Roberts Firearms Training		Tulare	(559) 303-2848
William M E Mclaren	William Mclaren	Oceanside	(858) 337-7876

California Firearms Laws Summary

2016

California Department of Justice
Kamala D. Harris
Attorney General
http://oag.ca.gov

Table of Contents

California Firearms Laws Summary 2016

California Firearms Laws Summary 2016

INTRODUCTION

As the owner of a firearm, it is your responsibility to understand and comply with all federal, state and local laws regarding firearms ownership. Many of the laws described below pertain to the possession, use and storage of firearms in the home and merit careful review. The California Firearms Laws Summary 2016 provides a general summary of California laws that govern common possession and use of firearms by persons other than law enforcement officers or members of the armed forces. It is not designed to provide individual guidance for specific situations, nor does it address federal or local laws. The legality of any specific act of possession or use will ultimately be determined by applicable federal and state statutory and case law. Persons having specific questions are encouraged to seek legal advice from an attorney, or consult their local law enforcement agency, local prosecutor or law library. The California Department of Justice (DOJ) and all other public entities are immune from any liability arising from the drafting, publication, dissemination, or reliance upon this information.

PERSONS INELIGIBLE TO POSSESS FIREARMS

The following persons are prohibited from possessing firearms (Pen. Code, §§ 29800-29825, 29900; Welf. & Inst. Code, §§ 8100, 8103):

Lifetime Prohibitions

- Any person convicted of any felony or any offense enumerated in Penal Code section 29905.
- Any person convicted of an offense enumerated in Penal Code section 23515.
- Any person with two or more convictions for violating Penal Code section 417, subdivision (a)(2).
- Any person adjudicated to be a mentally disordered sex offender. (Welf. & Inst. Code, § 8103, subd. (a)(1).)
- Any person found by a court to be mentally incompetent to stand trial or not guilty by reason of insanity of any crime, unless the court has made a finding of restoration of competence or sanity. (Welf. & Inst. Code, § 8103, subds. (b)(1), (c)(1), and (d)(1).)

10-Year Prohibitions

- Any person convicted of a misdemeanor violation of the following: Penal Code sections 71, 76, 136.5, 140, 148, subdivision (d), 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5, 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 422, 626.9, 646.9, 830.95, subdivision (a), 17500, 17510, subdivision (a), 25300, 25800, 27510, 27590, subdivision (c), 30315, or 32625, and Welfare and Institutions Code sections 871.5, 1001.5, 8100, 8101, or 8103.

5-Year Prohibitions

- Any person taken into custody as a danger to self or others, assessed, and admitted to a mental health facility under Welfare and Institutions Code sections 5150, 5151, 5152; or certified under Welfare and Institutions Code sections 5250, 5260, 5270.15. Persons certified under Welfare and Institutions Code sections 5250, 5260, or 5270.15 may be subject to a lifetime prohibition pursuant to federal law.

Juvenile Prohibitions

- Juveniles adjudged wards of the juvenile court are prohibited until they reach age 30 if they committed an offense listed in Welfare and Institutions Code section 707, subdivision (b). (Pen. Code, § 29820.)

Miscellaneous Prohibitions

- Any person denied firearm possession as a condition of probation pursuant to Penal Code section 29900, subdivision (c).
- Any person charged with a felony offense, pending resolution of the matter. (18 U.S.C. § 922(g).)
- Any person while he or she is either a voluntary patient in a mental health facility or under a gravely disabled conservatorship (due to a mental disorder or impairment by chronic alcoholism) and if he or she is found to be a danger to self or others. (Welf. & Inst. Code, § 8103, subd. (e).)
- Any person addicted to the use of narcotics. (Pen. Code, § 29800, subd. (a).)
- Any person who communicates a threat (against any reasonably identifiable victim) to a licensed psychotherapist which is subsequently reported to law enforcement, is prohibited for six months. (Welf. & Inst. Code, § 8100, subd. (b).)
- Any person who is subject to a protective order as defined in Family Code section 6218 or Penal Code section 136.2, or a temporary restraining order issued pursuant to Code of Civil Procedure sections 527.6 or 527.8.

Personal Firearms Eligibility Check

Any person may obtain from the DOJ a determination as to whether he or she is eligible to possess firearms (review of California records only). The personal firearms eligibility check application form and instructions are on the DOJ website at http://oag.ca.gov/firearms/forms. The cost for such an eligibility check is $20. (Pen. Code, § 30105.)

SALES AND TRANSFERS OF FIREARMS

In California, only licensed California firearms dealers who possess a valid Certificate of Eligibility (COE) are authorized to engage in retail sales of firearms. These retail sales require the purchaser to provide personal identifier information for the Dealer Record of Sale (DROS) document that the firearms dealer must submit to the DOJ. There is a mandatory 10-day waiting period before the firearms dealer can deliver the firearm to the purchaser. During this 10-day waiting period, the DOJ conducts a firearms eligibility background check to ensure the purchaser is not prohibited from lawfully possessing firearms. Although there are exceptions, generally all firearms purchasers must be at least 18 years of age to purchase a long gun (rifle or shotgun) and 21 years of age to purchase a handgun (pistol or revolver). Additionally, purchasers must be California residents with a valid driver's license or identification card issued by the California Department of Motor Vehicles.

Generally, it is illegal for any person who is not a California licensed firearms dealer (private party) to sell or transfer a firearm to another non-licensed person (private party) unless the sale or transfer is completed through a licensed California firearms dealer. A "Private Party Transfer" (PPT) can be conducted at any licensed California firearms dealership. The buyer and seller must complete the required DROS document in person at the licensed firearms dealership and deliver the firearm to the dealer who will retain possession of the firearm during the mandatory 10-day waiting period. In addition to the applicable state fees, the firearms dealer may charge a fee not to exceed $10 per firearm for conducting the PPT.

The infrequent transfer of firearms between immediate family members is exempt from the law requiring PPTs to be conducted through a licensed firearms dealer. For purposes of this exemption, "immediate family member" means parent and child, and grandparent and grandchild but does not include brothers or sisters. (Pen. Code, § 16720.) The transferee must also comply with the Firearm Safety Certificate requirement described below, prior to taking possession of the firearm. Within 30 days of the transfer, the transferee must also submit a report of the transaction to the DOJ. Download the form (Report of Operation of Law or Intra-Familial Firearm Transaction BOF 4544A) from the DOJ website at http://oag.ca.gov/firearms/forms or complete and submit the form electronically via the internet at https://CFARS.doj.ca.gov.

The reclaiming of a pawned firearm is subject to the DROS and 10-day waiting period requirements.

Specific statutory requirements relating to sales and transfers of firearms follow:

Proof-of-Residency Requirement

To purchase a handgun in California, you must present documentation indicating that you are a California resident. Acceptable documentation includes a utility bill from within the last three months, a residential lease, a property deed or military permanent duty station orders indicating assignment within California.

The address provided on the proof-of-residency document must match either the address on the DROS or the address on the purchaser's California driver's license or identification card. (Pen. Code, § 26845.)

Firearm Safety Certificate Requirement

To purchase or acquire a firearm, you must have a valid Firearm Safety Certificate (FSC). To obtain an FSC, you must score at least 75% on an objective written test pertaining to firearms laws and safety requirements. The test is administered by DOJ Certified Instructors, who are often located at firearms dealerships. An FSC is valid for five years. You may be charged up to $25 for an FSC. Firearms being returned to their owners, such as pawn returns, are exempt from this requirement. In the event of a lost, stolen or destroyed FSC, the issuing DOJ Certified Instructor will issue a replacement FSC for a fee of $5. You must present proof of identity to receive a replacement FSC. (Pen. Code, §§ 31610-31670.)

Safe Handling Demonstration Requirement

Prior to taking delivery of a firearm, you must successfully perform a safe handling demonstration with the firearm being purchased or acquired. Safe handling demonstrations must be performed in the presence of a DOJ Certified Instructor sometime between the date the DROS is submitted to the DOJ and the delivery of the firearm, and are generally performed at the firearms dealership. The purchaser, firearms dealer and DOJ Certified Instructor must sign an affidavit stating the safe handling demonstration was completed. The steps required to complete the safe handling demonstration are described in the Appendix. Pawn returns and intra-familial transfers are not subject to the safe handling demonstration requirement. (Pen. Code, § 26850.)

Firearms Safety Device Requirement

All firearms (long guns and handguns) purchased in California must be accompanied with a firearms safety device (FSD) that has passed required safety and functionality tests and is listed on the DOJ's official roster of DOJ-approved firearm safety devices. The current roster of certified FSDs is available on the DOJ website at http://oag.ca.gov/firearms/fsdcertlist. The FSD requirement also can be satisfied if the purchaser signs an affidavit declaring ownership of either a DOJ-approved lock box or a gun safe capable of accommodating the firearm being purchased. Pawn returns and intra-familial transfers are not subject to the FSD requirement. (Pen. Code, §§ 23635-23690.)

Roster of Handguns Certified for Sale in California

No handgun may be sold by a firearms dealer to the public unless it is of a make and model that has passed required safety and functionality tests and is listed on the DOJ's official roster of handguns certified for sale in California. The current roster of handguns certified for sale in California is on the DOJ website at http://certguns.doj.ca.gov/. PPTs, intrafamilial transfers, and pawn/consignment returns are exempt from this requirement. (Pen. Code, § 32000.)

One-Handgun-per-30-Days Limit

No person shall make an application to purchase more than one handgun within any 30-days period. Exemptions to the one-handgun-per-30-days limit include pawn returns, intra-familial transfers and private party transfers. (Pen. Code, § 27540.)

Handgun Sales and Transfer Requirements

	Retail Sales	Private Party Transfers	Intra-familial Transfers	Pawn Returns
Proof-of-Residency Requirement	Yes	Yes	No	Yes
Firearm Safety Certificate Requirement	Yes	Yes	Yes	No
Safe Handling Demonstration Requirement	Yes	Yes	No	No
Firearm Safety Device Requirement	Yes	Yes	No	No
Roster of Handguns Certified for Sale in California	Yes	No	No	No
One-Handgun-Per-30-Days Limit	Yes	No	No	No

Long Gun Sales and Transfer Requirements

	Retail Sales	Private Party Transfers	Intra-familial Transfers	Pawn Returns
Proof-of-Residency Requirement	No	No	No	No
Firearm Safety Certificate Requirement	Yes	Yes	Yes	No
Safe Handling Demonstration Requirement	Yes	Yes	No	No
Firearm Safety Device Requirement	Yes	Yes	No	No

PROHIBITED FIREARMS TRANSFERS AND STRAW PURCHASES

What is a straw purchase?

A straw purchase is buying a firearm for someone who is prohibited by law from possessing one, or buying a firearm for someone who does not want his or her name associated with the transaction.

It is a violation of California law for a person who is not licensed as a California firearms dealer to transfer a firearm to another unlicensed person, without conducting such a transfer through a licensed firearms dealer. (Pen. Code, § 27545.) Such a transfer may be punished as a felony. (Pen. Code, § 27590.)

Furthermore, it is a violation of federal law to either (1) make a false or fictitious statement on an application to purchase a firearm about a material fact, such as the identify of the person who ultimately will acquire the firearm (commonly known as "lying and buying") (18 U.S.C. 922(a)(6)), or (2) knowingly transfer a firearm to a person who is prohibited by federal law from possessing and purchasing it. (18 U.S.C. 922(d).) Such transfers are punishable under federal law by a $250,000 fine and 10 years in federal prison. (18 U.S.C. 924(a)(2).)

Things to Remember About Prohibited Firearms Transfers and Straw Purchases

An illegal firearm purchase (straw purchase) is a federal crime.

An illegal firearm purchase can bring a felony conviction sentence of 10 years in jail and a fine of up to $250,000.

Buying a gun and giving it to someone who is prohibited from owning one is a state and federal crime.

Never buy a gun for someone who is prohibited by law or unable to do so.

REPORTING REQUIREMENTS FOR NEW CALIFORNIA RESIDENTS

New California residents must report their ownership of firearms to the DOJ or sell/transfer them in accordance with California law, within 60 days of bringing the firearm into the state. Persons who want to keep their firearms must submit a New Resident Firearm Ownership Report (BOF 4010A), along with a $19 fee, to the DOJ. Forms are available at licensed firearms dealers, the Department of Motor Vehicles or on-line at the DOJ website at http://oag.ca.gov/firearms/forms. Forms may also be completed and submitted electronically via the internet at https://CFARS.doj.ca.gov (Pen. Code, § 27560.)

SHIPMENT OF FIREARMS

Long guns may be mailed through the U.S. Postal Service, as well as most private parcel delivery services or common carriers. Handguns may not be sent through the U.S. Postal Service. A common or contract carrier must be used for shipment of handguns. However, pursuant to federal law, non-licensees may ship handguns only to persons who hold a valid Federal Firearms License (FFL).

Both in-state and out-of-state FFL holders are required to obtain approval (e.g., a unique verification number) from the California DOJ prior to shipping firearms to any California FFL. (Pen. Code, § 27555.)

CARRYING FIREARMS ABOARD COMMON CARRIERS

Federal and state laws generally prohibit a person from carrying any firearm or ammunition aboard any commercial passenger airplane. Similar restrictions may apply to other common carriers such as trains, ships and buses. Persons who need to carry firearms or ammunition on a common carrier should always consult the carrier in advance to determine conditions under which firearms may be transported.

FIREARMS IN THE HOME, BUSINESS OR AT THE CAMPSITE

Unless otherwise unlawful, any person over the age of 18 who is not prohibited from possessing firearms may have a loaded or unloaded firearm at his or her place of residence, temporary residence, campsite or on private property owned or lawfully possessed by the person. Any person engaged in lawful business (including nonprofit organizations) or any officer, employee or agent authorized for lawful purposes connected with the business may have a loaded firearm within the place of business if that person is over 18 years of age and not otherwise prohibited from possessing firearms. (Pen. Code, §§ 25605, 26035.)

NOTE: If a person's place of business, residence, temporary residence, campsite or private property is located within an area where possession of a firearm is prohibited by local or federal laws, such laws would prevail.

TRANSPORTATION OF FIREARMS

Handguns

California Penal Code section 25400 does not prohibit a citizen of the United States over 18 years of age who is in lawful possession of a handgun, and who resides or is temporarily in California, from transporting the handgun by motor vehicle provided it is unloaded and stored in a locked container. (Pen. Code, § 25610.)

The term "locked container" means a secure container which is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device. This includes the trunk of a motor vehicle, but does not include the utility or glove compartment. (Pen. Code, § 16850.)

Rifles and Shotguns

Nonconcealable firearms (rifles and shotguns) are not generally covered within the provisions of California Penal Code section 25400 and therefore are not required to be transported in a locked container. However, as with any firearm, nonconcealable firearms must be unloaded while they are being transported. A rifle or shotgun that is defined as an assault weapon pursuant to Penal Code section 30510 or 30515 must be transported in accordance with Penal Code section 25610.

Registered Assault Weapons and .50 BMG Rifles

Registered assault weapons and registered .50 BMG rifles may be transported only between specified locations and must be unloaded and in a locked container when transported. (Pen. Code, § 30945, subd. (g).)

The term "locked container" means a secure container which is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device. This includes the trunk of a motor vehicle, but does not include the utility or glove compartment. (Pen. Code, § 16850.)

USE OF LETHAL FORCE IN SELF-DEFENSE

The question of whether use of lethal force is justified in self-defense cannot be reduced to a simple list of factors. This section is based on the instructions generally given to the jury in a criminal case where self-defense is claimed and illustrates the general rules regarding the use of lethal force in self-defense.

Permissible Use of Lethal Force in Defense of Life and Body

The killing of one person by another may be justifiable when necessary to resist the attempt to commit a forcible and life-threatening crime, provided that a reasonable person in the same or similar situation would believe that (a) the person killed intended to commit a forcible and life-threatening crime; (b) there was imminent danger of such crime being accomplished; and (c) the person acted under the belief that such force was necessary to save himself or herself or another from death or a forcible and life-threatening crime. Murder, mayhem, rape and robbery are examples of forcible and life-threatening crimes. (Pen. Code, § 197.)

Self-Defense Against Assault

It is lawful for a person being assaulted to defend themself from attack if he or she has reasonable grounds for believing, and does in fact believe, that he or she will suffer bodily injury. In doing so, he or she may use such force, up to deadly force, as a reasonable person in the same or similar circumstances would believe necessary to prevent great bodily injury or death. An assault with fists does not justify use of a deadly weapon in self-defense unless the person being assaulted believes, and a reasonable person in the same or similar circumstances would also believe, that the assault is likely to inflict great bodily injury.

It is lawful for a person who has grounds for believing, and does in fact believe, that great bodily injury is about to be inflicted upon another to protect the victim from attack. In so doing, the person may use such force as reasonably necessary to prevent the injury. Deadly force is only considered reasonable to prevent great bodily injury or death.

NOTE: The use of excessive force to counter an assault may result in civil or criminal penalties.

Limitations on the Use of Force in Self-Defense

The right of self-defense ceases when there is no further danger from an assailant. Thus, where a person attacked under circumstances initially justifying self-defense renders the attacker incapable of inflicting further injuries, the law of self-defense ceases and no further force may be used. Furthermore, a person may only use the amount of force, up to deadly force, as a reasonable person in the same or similar circumstances would believe necessary to prevent imminent injury. It is important to note the use of excessive force to counter an assault may result in civil or criminal penalties.

The right of self-defense is not initially available to a person who assaults another. However, if such a person attempts to stop further combat and clearly informs the adversary of his or her desire for peace but the opponent nevertheless continues the fight, the right of self-defense returns and is the same as the right of any other person being assaulted.

Protecting One's Home

A person may defend his or her home against anyone who attempts to enter in a violent manner intending violence to any person in the home. The amount of force that may be used in resisting such entry is limited to that which would appear necessary to a reasonable person in the same or similar circumstances to resist the violent entry. One is not bound to retreat, even though a retreat might safely be made. One may resist force with force, increasing it in proportion to the intruder's persistence and violence, if the circumstances apparent to the occupant would cause a reasonable person in the same or similar situation to fear for his or her safety.

The occupant may use a firearm when resisting the intruder's attempt to commit a forcible and life-threatening crime against anyone in the home provided that a reasonable person in the same or similar situation would believe that (a) the intruder intends to commit a forcible and life-threatening crime; (b) there is imminent danger of such crime being accomplished; and (c) the occupant acts under the belief that use of a firearm is necessary to save himself or herself or another from death or great bodily injury. Murder, mayhem, rape, and robbery are examples of forcible and life-threatening crimes.

Any person using force intended or likely to cause death or great bodily injury within his or her residence shall be presumed to have held a reasonable fear of imminent peril of death or great bodily injury to self, family, or a member of the household when that force is used against another person, not a member of the family or household, who unlawfully and forcibly enters or has unlawfully and forcibly entered the residence and the person using the force knew or had reason to believe that an unlawful and forcible entry had occurred. Great bodily injury means a significant or substantial physical injury. (Pen. Code, § 198.5.)

NOTE: If the presumption is rebutted by contrary evidence, the occupant may be criminally liable for an unlawful assault or homicide.

Defense of Property

The lawful occupant of real property has the right to request a trespasser to leave the premises. If the trespasser does not do so within a reasonable time, the occupant may use force to eject the trespasser. The amount of force that may be used to eject a trespasser is limited to that which a reasonable person would believe to be necessary under the same or similar circumstances.

CARRYING A CONCEALED WEAPON WITHOUT A LICENSE

It is illegal for any person to carry a handgun concealed upon his or her person or concealed in a vehicle without a license issued pursuant to Penal Code section 26150. (Pen. Code, § 25400.) A firearm locked in a motor vehicle's trunk or in a locked container carried in the vehicle other than in the utility or glove compartment is not considered concealed within the meaning of the Penal Code section 25400; neither is a firearm carried within a locked container directly to or from a motor vehicle for any lawful purpose. (Pen. Code, § 25610.)

The prohibition from carrying a concealed handgun does not apply to licensed hunters or fishermen while engaged in hunting or fishing, or while going to or returning from the hunting expedition. (Pen. Code, § 25640.) Notwithstanding this exception for hunters or fishermen, these individuals may not carry or transport loaded firearms when going to or from the expedition. The unloaded firearms should be transported in the trunk of the vehicle or in a locked container other than the utility or glove compartment. (Pen. Code, § 25610.)

There are also occupational exceptions to the prohibition from carrying a concealed weapon, including authorized employees while engaged in specified activities. (Pen. Code, §§ 25630, 25640.)

LOADED FIREARMS IN PUBLIC

It is illegal to carry a loaded firearm on one's person or in a vehicle while in any public place, on any public street, or in any place where it is unlawful to discharge a firearm. (Pen. Code, § 25850, subd. (a).)

It is illegal for the driver of any motor vehicle, or the owner of any motor vehicle irrespective of whether the owner is occupying the vehicle to knowingly permit any person to carry a loaded firearm into the vehicle in violation of Penal Code section 25850, or Fish and Game Code section 2006. (Pen. Code, § 26100.)

A firearm is deemed loaded when there is a live cartridge or shell in, or attached in any manner to, the firearm, including, but not limited to, the firing chamber, magazine, or clip thereof attached to the firearm. A muzzle-loading firearm is deemed loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinder. (Pen. Code, § 16840.)

In order to determine whether a firearm is loaded, peace officers are authorized to examine any firearm carried by anyone on his or her person or in a vehicle while in any public place, on any public street or in any prohibited area of an

unincorporated territory. Refusal to allow a peace officer to inspect a firearm pursuant to these provisions is, in itself, grounds for arrest. (Pen. Code, § 25850, subd. (b).)

The prohibition from carrying a loaded firearm in public does not apply to any person while hunting in an area where possession and hunting is otherwise lawful or while practice shooting at target ranges. (Pen. Code, §§ 26005, 26040.) There are also occupational exceptions to the prohibition from carrying a loaded firearm in public, including authorized employees while engaged in specified activities. (Pen. Code, §§ 26015, 26030.)

NOTE: Peace officers and honorably retired peace officers having properly endorsed identification certificates may carry a concealed weapon at any time. Otherwise, these exemptions apply only when the firearm is carried within the scope of the exempted conduct, such as hunting or target shooting, or within the course and scope of assigned duties, such as an armored vehicle guard transporting money for his employer. A person who carries a loaded firearm outside the limits of the applicable exemption is in violation of the law, notwithstanding his or her possession of an occupational license or firearms training certificate. (Pen. Code, § 12031(b).)

OPENLY CARRYING AN UNLOADED HANDGUN

It is generally illegal for any person to carry upon his or her person or in a vehicle, an exposed and unloaded handgun while in or on:

- A public place or public street in an incorporated city or city and county; or
- A public street in a prohibited area of an unincorporated city or city and county. (Pen. Code, § 26350.)

It is also illegal for the driver or owner of a motor vehicle to allow a person to bring an open and exposed unloaded handgun into a motor vehicle in specified public areas. (Pen. Code, § 17512.)

PUNISHMENT FOR CARRYING UNREGISTERED HANDGUN

Any person who commits the crime of carrying a concealed handgun while having both the handgun and ammunition for that handgun on his/her person or in his/her vehicle may be subject to a felony enhancement if the handgun is not on file (registered) in the DOJ's Automated Firearms System. (Pen. Code, § 25400, subd. (c).)

Any person who commits the crime of carrying a loaded handgun on his/her person in a prohibited place may be guilty of a felony if the handgun is not on file (registered) in the DOJ's Automated Firearms System. (Pen. Code, § 25850, subd. (c).)

MISCELLANEOUS PROHIBITED ACTS

Obliteration or Alteration of Firearm Identification

It is illegal for any person to obliterate or alter the identification marks placed on any firearm including the make, model, serial number or any distinguishing mark lawfully assigned by the owner or by the DOJ. (Pen. Code, § 23900.)

It is illegal for any person to buy, sell or possess a firearm knowing its identification has been obliterated or altered. (Pen. Code, § 23920.)

Unauthorized Possession of a Firearm on School Grounds

It is illegal for any unauthorized person to possess or bring a firearm upon the grounds of, or into, any public school, including the campuses of the University of California, California State University campuses, California community colleges, any private school (kindergarten through 12th grade) or private university or college. (Pen. Code, § 626.9.)

Unauthorized Possession of a Firearm in a Courtroom, the State Capitol, etc.

It is illegal for any unauthorized person to bring or possess any firearm within a courtroom, courthouse, court building or at any meeting required to be open to the public. (Pen. Code, § 171b.)

It is illegal for any unauthorized person to bring or possess a loaded firearm within (including upon the grounds of) the State Capitol, any legislative office, any office of the Governor or other constitutional officer, any Senate or Assembly hearing room, the Governor's Mansion or any other residence of the Governor or the residence of any constitutional officer or any Member of the Legislature. For these purposes, a firearm shall be deemed loaded whenever both the firearm and its unexpended ammunition are in the immediate possession of the same person. (Pen. Code, §§ 171c, 171d, 171e.)

Drawing or Exhibiting a Firearm

If another person is present, it is illegal for any person, except in self-defense, to draw or exhibit a loaded or unloaded firearm in a rude, angry or threatening manner or in any manner use a firearm in a fight or quarrel. (Pen. Code, § 417.)

Threatening Acts with a Firearm on a Public Street or Highway

It is illegal for any person to draw or exhibit a loaded or unloaded firearm in a threatening manner against an occupant of a motor vehicle which is on a public street or highway in such a way that would cause a reasonable person apprehension or fear of bodily harm. (Pen. Code, § 417.3.)

Discharge of a Firearm in a Grossly Negligent Manner

It is illegal for any person to willfully discharge a firearm in a grossly negligent manner which could result in injury or death to a person. (Pen. Code, § 246.3.)

Discharge of a Firearm at an Inhabited/Occupied Dwelling, Building, Vehicle, Aircraft

It is illegal for any person to maliciously and willfully discharge a firearm at an inhabited dwelling, house, occupied building, occupied motor vehicle, occupied aircraft, inhabited housecar or inhabited camper. (Pen. Code, § 246.)

Discharge of a Firearm at an Unoccupied Aircraft, Motor Vehicle, or Uninhabited Building or Dwelling

It is illegal for any person to willfully and maliciously discharge a firearm at an unoccupied aircraft. It is illegal for any person to discharge a firearm at an unoccupied motor vehicle, building or dwelling. This does not apply to an abandoned vehicle, an unoccupied motor vehicle or uninhabited building or dwelling with permission of the owner and if otherwise lawful. (Pen. Code, § 247.)

Discharge of a Firearm from a Motor Vehicle

It is illegal for any person to willfully and maliciously discharge a firearm from a motor vehicle. A driver or owner of a vehicle who allows any person to discharge a firearm from the vehicle may be punished by up to three years imprisonment in state prison. (Pen. Code, § 26100.)

Criminal Storage

"Criminal storage of firearm of the first degree" – Keeping any loaded firearm within any premises that are under your custody or control and you know or reasonably should know that a child (any person under 18) is likely to gain access to the firearm without the permission of the child's parent or legal guardian and the child obtains access to the firearm and thereby causes death or great bodily injury to himself, herself, or any other person. (Pen. Code, § 25100, subd. (a).)

"Criminal storage of firearm of the second degree" – Keeping any loaded firearm within any premises that are under your custody or control and you know or reasonably should know that a child (any person under 18) is likely to gain access to the firearm without the permission of the child's parent or legal guardian and the child obtains access to the firearm and thereby causes injury, other than great bodily injury, to himself, herself, or any other person, or carries the firearm either to a public place or in violation of Penal Code section 417. (Pen. Code, § 25100, subd. (b).)

Neither of the criminal storage offenses (first degree, second degree) shall apply whenever the firearm is kept in a locked container or locked with a locking device that has rendered the firearm inoperable. (Pen. Code, § 25105.)

Sales, Transfers and Loans of Firearms to Minors

Generally, it is illegal to sell, loan or transfer any firearm to a person under 18 years of age, or to sell a handgun to a person under 21 years of age. (Pen. Code, § 27505.)

Possession of a Handgun or Live Ammunition by Minors

It is unlawful for a minor to possess a handgun unless one of the following circumstances exist:

- The minor is accompanied by his or her parent or legal guardian and the minor is actively engaged in a lawful recreational sporting, ranching or hunting activity, or a motion picture, television or other entertainment event;
- The minor is accompanied by a responsible adult and has prior written consent of his or her parent or legal guardian and is involved in one of the activities cited above; or
- The minor is at least 16 years of age, has prior written consent of his or her parent or legal guardian, and the minor is involved in one of the activities cited above. (Pen. Code, §§ 29610, 29615.)

It is unlawful for a minor to possess live ammunition unless one of the following circumstances exist:

- The minor has the written consent of a parent or legal guadian to possess live ammunition;
- The minor is accompanied by a parent or legal guardian; or
- The minor is actively engaged in, or is going to or from, a lawful, recreational sport, including, competitive shooting, or agricultural, ranching, or hunting activity. (Pen. Code, §§ 29650, 29655.)

NEW FIREARMS/WEAPONS LAWS

AB 892 (Stats. 2015, ch. 203) – Purchase of State-Issued Handgun by Spouse/Domestic Partner of Peace Officer Killed in the Line of Duty

- Provides an exception to the Unsafe Handgun Act allowing the spouse/domestic partner of a peace officer killed in the line of duty to purchase their spouse/domestic partner's service weapon. (Pen. Code, § 32000.)

AB 950 (Stats. 2015, ch. 205) – Gun Violence Restraining Orders

- Allows a person who is subject to a gun violence restraining order to transfer his or her firearms or ammunition to a licensed firearms dealer for the duration of the prohibition. If the firearms or ammunition have been surrendered to a law enforcement agency, the bill would entitle the owner to have them transferred to a licensed firearms dealer. (Pen. Code, §§ 29830.)
- Extends to ammunition, current authority for a city or county to impose a charge relating to the seizure, impounding, storage, or release of a firearm. (Pen. Code, § 33880.)

AB 1014 (Stats. 2014, ch. 872) – Gun Violence Restraining Orders

- Beginning June 1, 2016, authorizes courts to issue gun violence restraining orders, ex parte gun violence restraining orders, and temporary emergency gun violence restraining orders if the subject of the petition poses a significant danger of personal injury to himself, herself, or another by having in his or her custody or control, owning, purchasing, possessing, or receiving a firearm and that the order is necessary to prevent personal injury to himself, herself, or another, as specified. (Pen. Code, §§ 18100 - 18205.)
- Beginning June 1, 2016, makes it a misdemeanor to own or possess a firearm or ammunition with the knowledge that he or she is prohibited from doing so by a gun violence restraining order. (Pen. Code, § 18205.)
- Beginning June 1, 2016, makes it a misdemeanor to file a petition for a gun violence restraining order with the intent to harass or knowing the information in the petition to be false. (Pen. Code, § 18200.)

AB 1134 (Stats. 2015, ch. 785) – Licenses to Carry Concealed Handguns

- Authorizes the sheriff of a county to enter into an agreement with the chief or other head of a municipal police department of a city for the chief or other head of a municipal police department to process all applications for licenses to carry a concealed handgun, renewals of those licenses, and amendments of those licenses, for that city's residents. (Pen. Code, § 26150.)

AB 2220 (Stats. 2014, ch. 423) – Private Patrol Operators

- Beginning July 1, 2016, establishes procedures allowing a Private Patrol Operator (PPO) business entity to be the registered owner of a firearm.
- Beginning July 1, 2016, allows a security guard to be assigned a firearm by the PPO and for a firearm custodian to be designated by the PPO. (Pen. Code, §§ 16970, 31000, 32650.)

SB 199 (Stats. 2014, ch. 915) – BB Devices and Imitation Firearms

- Beginning January 1, 2016, amends the definitions of a "BB device" and an "imitation firearm." (Pen. Code, §§ 16250, 16700.)

SB 707 (Stats. 2015, ch. 766) – Gun-free School Zones

- Recasts Gun-Free School Zone Act provisions relating to a person holding a valid license to carry a concealed firearm to allow that person to carry a firearm in an area that is within 1,000 feet of, but not on the grounds of, a public or private school providing instruction in kindergarten or grades 1 to 12, inclusive. (Pen. Code, § 626.9.)
- Creates an exemption from the Gun-Free School Zone Act for certain appointed peace officers authorized to carry a firearm by their appointing agency, and for certain retired reserve peace officers authorized to carry a concealed or loaded firearm. (Pen. Code, § 626.9.)

- Deletes the exemption that allows a person holding a valid license to carry a concealed firearm to bring or possess a firearm on the campus of a university or college. (Pen. Code, § 30310.)
- Deletes the exemption that allows a person to carry ammunition or reloaded ammunition onto school grounds if the person is licensed to carry a concealed firearm. (Pen. Code, § 30310.)
- Creates a new exemption authorizing a person to carry ammunition or reloaded ammunition onto school grounds if it is in a motor vehicle at all times and is within a locked container or within the locked trunk of the vehicle. (Pen. Code, § 30310.)

If you have any comments or suggestions
regarding this publication, please send them to:

Department of Justice
Bureau of Firearms / HSC Unit
P.O. Box 160367
Sacramento, CA 95816-0367

or via our website at
http://oag.ca.gov/firearms

Criminal Justice Collaborative

Cops Say Low Morale And Department Scrutiny Are Driving Them Away From The Job

June 24, 2021 · 2:53 PM ET

ERIC WESTERVELT

A demonstrator holds her hands up while she kneels in front of the Police at the Anaheim City Hall on June 1, 2020 in Anaheim, California. Reform pressures have many cops leaving the job.

APU GOMES/AFP via Getty Images

The historic calls for police accountability, reform and attempts at racial reckoning have left police departments nationwide struggling to keep the officers they have and

attract new ones to the force.

The crisis comes as many cities continue to grapple with the fallout from the pandemic and sharp increases in shootings and murders.

In many places, police morale has plunged and retirements and resignations have soared. A June survey of nearly 200 departments by the Police Executive Research Forum (PERF), a nonprofit think tank, shows a startling 45% increase in the retirement rate and a nearly 20% increase in resignations in 2020-21 compared to the previous year.

"We are in uncharted territory right now," PERF's Executive Director Chuck Wexler says. "Policing is being challenged in ways I haven't seen, ever."

THROUGHLINE

Policing in America

The exodus is affecting departments large, small and in between. The research group's survey shows that in the largest departments with 500 hundred or more officers, the retirement rate increased by nearly 30%. Overall, new police hiring has dropped 5%.

And the timing of these staffing problems couldn't be worse: multiple cities are seeing startling increases in shootings and murders just as more areas start to return to a sense of normalcy following 15 months of pandemic-induced disruptions. Large cities have seen a 24% spike in killings so far this year, following a more than 30% rise in homicides last year. Overall crime figures, however, went down during the pandemic.

"So at that very moment you're hoping you can put police out there to try to deal with crime, you're seeing the workforce shrinking with an unprecedented number of retirements and resignations," Wexler says.

Washington has pledged to help fight gun crimes

President Biden addressed the sharp rise in homicides and shootings Wednesday. He touted his administration's plan to tackle gun crime by cracking down on gun sellers who fail to run required background checks. The president is also redirecting some $350 billion in federal stimulus money toward police departments in cities where crime is up. The spike in violent crime follows nearly two decades in which violent crime trended downward. "This takes us back to levels, homicide rates, that we would have seen in the late '90s," says law professor Ronald Wright at Wake Forest University.

Exit interviews in the PERF survey and other data show that a key factor in the police resignations and retirements is the national conversation and protests that center on changing what the police do, how they're funded, and how to better hold officers accountable for abuse of force and racial bias.

AMERICA RECKONS WITH RACIAL INJUSTICE

With Slow Progress On Federal Level, Police Reform Remains Patchwork Across U.S.

Some cities are pushing for police to no longer be the first responders for persons in a mental health homeless or substance use crisis. Studies show that nearly a quarter of fatal police encounters followed calls about "disruptive behavior" directly tied to a person's mental illness and/or substance abuse disorder.

"Let's be honest, the conversation nationally has really been very, very much questioning police authority, what they do, how they do it," PERF's Wexler says. "So if you wake up every day and that's what you hear, it takes its toll."

For some officers that toll means a career change.

"You know, cops need to be resilient and they are. But for some, if they have an opportunity to do something different, that's what's happening," he says.

Retaining and recruiting police is proving to be difficult

The recruitment challenge is likely to only get worse as the economy further rebounds in the months ahead. Recruitment was already a serious challenge *before* the pandemic and racial justice protests, as we've reported.

Making matters worse, it can take on average six months to a year or longer to recruit, hire and train an officer.

As Miami-Dade Police Chief Art Acevedo recently put it in an interview with NPR, addressing the crime surge amid the recruitment challenges is about more than expanding patrols in high-crime areas.

CRIMINAL JUSTICE COLLABORATIVE

American Cops Are Under Pressure To Rely Less On Guns And Take More Personal Risk

"It's also making sure that you have the proper supervision, the proper oversight and the proper mindset in terms of how we approach the way we treat the community," Acevedo said. "I think when we do that, people appreciate you. If you harass them, then they become, I think, upset, and you start heading your relationship in the wrong direction."

Activists and analysts alike say police leaders can and should do more to actively engage in the fraught and complex national conversation about race and law enforcement underway.

"How do we find a middle ground between where the police need to be and where the reform issues are?" Wexler asks, noting that the areas with the highest spikes in shootings are among the most economically disadvantaged or in communities with people of color. "So the people who most need the police right now, that's what we should be concerned about. Maybe there's an opportunity to to see a way to find a middle ground."

Cash incentives are being offered to potential recruits

The recruiting and retention crisis is affecting departments across the nation. While not a representative sample of the nation's more than 18,000 police departments, the

PERF survey includes responses from departments small and large and nonetheless offers insight into a festering problem for American policing.

In Minneapolis this April former officer Derek Chauvin was convicted of multiple murder counts in the death of George Floyd. Since his murder the police department there has lost nearly 300 officers from attrition, disability leave and retirements, Minnesota Public Radio reports. So far this year the number of gunshot victims in Minneapolis is up 90% from last year.

In Seattle, police leaders are warning of a staffing crisis after more than 180 officers quit last year and almost 70 others have left so far this year, the AP reports. Exit interviews show the majority who left tired of City Council policies, including threats of layoffs and cuts as well as an anti-police climate.

In Philadelphia from January through April of this year at least 79 Philadelphia officers took the city's Deferred Retirement Option Program, meaning they intend to retire within four years, according to the mayor's office. In the same time period last year, just 13 officers made that move.

AMERICA RECKONS WITH RACIAL INJUSTICE
NYPD Study: Implicit Bias Training Changes Minds, Not Necessarily Behavior

NPR member station WGBH reports that in Watertown, Mass., Police Chief Michael Lawn posted on social media to try to attract new applicants last year, just six people attended the event and only two dozen took the civil service test. It was among the suburban Boston town's lowest turnout in department history.

"This job has changed," Chief Lawn told WGBH News. "Nobody wants this job anymore."

Chandler, Ariz., is now offering cash incentives up to $5,000 to try to attract and hire new officers and dispatchers, as NPR member station KJZZ reports. In 2020, the chief in Tempe abruptly resigned. The station says departments across Arizona report recruitment challenges.

In comments to PERF for their report police leaders make clear the challenges are the worst they've seen. PERF granted the officials anonymity so they could speak freely.

"We have seen an approximate 40% reduction in applicant packets this last fiscal year. In addition, we are seeing fewer 'above average' candidates," one official wrote, adding. "The current rhetoric and negativity surrounding law enforcement is having a negative impact on the number and quality of applicants we recruit."

Another senior police official told PERF that many of those are applying are not meeting the minimum requirements. They are "failing either the background investigation or polygraph. Minority hiring, a significant goal, has been considerably more difficult," the official wrote, adding. "Police accountability has been a source of conversation and concern among those who are hired, and those who left."

officers police departments violent crime police

More Stories From NPR

NATIONAL
There's a backlash brewing against bail reform after the parade tragedy in Waukesha

NATIONAL
More than 17,000 deaths caused by police have been misclassified since 1980

NATIONAL
After 25 Years In The Dark, The CDC Wants To Study The True Toll Of Guns In America

NATIONAL
Policing In Minneapolis May Look Different After A Ballot Vote In November

NATIONAL
Overdose Deaths In State Prisons Have Jumped Dramatically Since 2001

NATIONAL
Violent Crime Has Stayed High — Whether Police Are The Answer Is Up For Debate

Popular on NPR.org

BUSINESS

Grocery store shortages are back. Here are some of the reasons why

GLOBAL HEALTH

Coronavirus FAQ: Why are some folks hacking home COVID tests by swabbing their throat?

EDUCATION

Navient reaches a deal to cancel $1.7 billion in student loan debts

POLITICS

Pressed on his election lies, former President Trump cuts NPR interview short

GAMES & HUMOR

Here's what's behind the Wordle c-r-a-z-e

EDUCATION

More than 1 million fewer students are in college. Here's how that impacts the economy

NPR Editors' Picks

POLITICS

California governor denies RFK assassin Sirhan Sirhan parole

RACE

Sidney Poitier: actor, activist, and trailblazing heartthrob

POP CULTURE

How Ronnie Spector and 'Be My Baby' became a pop-culture sound of sex in 1987

FOOD

After more than 70 years, the FDA is dropping its regulation for French dressing

LAW

Oath Keepers leader arrested, charged with seditious conspiracy for Jan. 6 riot

MOVIES

The 'Rust' armorer is suing the film's ammo supplier over the deadly, on-set shooting

Criminal Justice Collaborative

READ & LISTEN

Home

News

Arts & Life

Music

Podcasts & Shows

CONNECT

Newsletters

Facebook

Twitter

Instagram

Press

Contact & Help

ABOUT NPR

Overview

Diversity

Ethics

Finances

Public Editor

Corrections

GET INVOLVED

Support Public Radio

Sponsor NPR

NPR Careers

NPR Shop

NPR Events

NPR Extra

Ammunition shelves bare as U.S. gun sales continue to soar

AP apnews.com/article/sports-business-health-coronavirus-pandemic-gun-politics-86e61939eb4ae1230e110ed6d7576b70

July 31, 2021

1 of 5

FILE - In this July 16, 2019, file photo, officers taking part in training load gun clips with ammunition at the Washington State Criminal Justice Training Commission in Burien, Wash. The COVID-19 pandemic coupled with record sales of firearms have created a shortage of ammunition in the United States that has impacting competition and recreational shooters, hunters, people seeking personal protection and law enforcement agencies. (AP Photo/Ted S. Warren, File)

SEATTLE (AP) — The COVID-19 pandemic, coupled with record sales of firearms, has fueled a shortage of ammunition in the United States that's impacting law enforcement agencies, people seeking personal protection, recreational shooters and hunters -- and could deny new gun owners the practice they need to handle their weapons safely.

Manufacturers say they're producing as much ammunition as they can, but many gun store shelves are empty and prices keep rising. Ammunition imports are way up, but at least one U.S. manufacturer is exporting ammo. All while the pandemic, social unrest and a rise in violent crime have prompted millions to buy guns for protection or to take up shooting for sport.

“We have had a number of firearms instructors cancel their registration to our courses because their agency was short on ammo or they were unable to find ammo to purchase,” said Jason Wuestenberg, executive director of the National Law Enforcement Firearms Instructors Association.

Doug Tangen, firearms instructor at the Washington State Criminal Justice Training Commission, the police academy for the state, said the academy also has had trouble obtaining ammo.

“A few months ago, we were at a point where our shelves were nearly empty of 9mm ammunition,” he said. In response, instructors took conservation steps like reducing the number of shots fired per drill, which got them through several months until fresh supplies arrived, Tangen said.

Officer Larry Hadfield, a spokesman for the Las Vegas Metropolitan Police Department, said his department also has been affected by the shortage. “We have made efforts to conserve ammunition when possible,” he said.

The National Shooting Sports Foundation, an industry trade group, says more than 50 million people participate in shooting sports in the U.S. and estimates that 20 million guns were sold last year, with 8 million of those sales made by first-time buyers.

“When you talk about all these people buying guns, it really has an impact on people buying ammunition,” spokesman Mark Oliva said. ”If you look at 8.4 million gun buyers and they all want to buy one box with 50 rounds, that’s going to be 420 million rounds.”

The FBI’s National Instant Criminal Background Check System database also documented an increase in sales: In 2010, there were 14.4 million background checks for gun purchases. That jumped to almost 39.7 million in 2020 and to 22.2 million just through June 2021 alone.

The actual number of guns sold could be much higher since multiple firearms can be linked to a single background check. No data is available for ammunition because sales are not regulated and no license is required to sell it.

As the pandemic raced across the country in early 2020, the resulting lockdown orders and cutbacks on police response sowed safety fears, creating an “overwhelming demand” for both guns and ammo, Oliva said. Factories continued to produce ammunition, but sales far exceeded the amount that could be shipped, he said.

“Where there is an increased sense of instability, fear and insecurity, more people will purchase guns,” said Ari Freilich of the Gifford Law Center to Prevent Gun Violence.

As supplies dwindled, Feilich said, some gun owners began stockpiling ammo.

“Early on in the pandemic, we saw people hoarding toilet paper, disinfectant, and now it’s ammo,” he said.

Wustenberg emphasized the danger in first-time gun buyers not being able to practice using their new weapons.

Going to the gun range entails more than trying to hit a target, he said. It's where shooters learn fundamental skills like always pointing their guns in a safe direction and keeping their fingers off the trigger until they're ready to fire.

"It's that old adage: Just because you buy a guitar doesn't mean you're a guitar player," Wustenberg said. "Some have the misconception of 'I shot this target 5 yards away and did just fine so I'm OK if someone breaks into my house.' You've got to go out and practice with it."

The U.S. military is not affected by the shortage because the Army produces ammunition for all branches of the military at six sites across the country, according to Justine Barati, spokesperson for the U.S. Army Joint Munitions Command.

The U.S. shooting team, which won four medals at the Tokyo Olympics, also had the ammo needed to train thanks to a commitment from sponsors, but membership and junior programs have struggled, said Matt Suggs, chief executive officer for USA Shooting.

The U.S. Biathlon team, training for the 2022 Winter Olympics in February, also has been supplied with ammo from its sponsor, Lapua, made in Finland. But local clubs face shortages, said Max Cobb, president of U.S. Biathlon Association.

Jason Vanderbrink, a vice president at Vista Outdoor, which owns the Federal, CCI, Speer and Remington ammunition brands, said the companies are shipping ammo as fast as they can make it.

"I'm tired of reading the misinformation on the internet right now about us not trying to service the demand that we're experiencing," he said in a YouTube video produced for customers aimed at quashing speculation suggesting otherwise.

Imports of ammunition from Russia, South Korea, the European Union and others were up 225% over the past two years, according to an analysis by Panjiva Inc., which independently tracks global trade. But at least some U.S.-made ammo is heading out of the country.

Winchester has logged 107 shipments since January 2020, according to Panjiva. Most went to Australia to fulfill a contract Winchester secured with NIOA, the country's largest small-arms supplier. Nigel Everingham, NIOA's chief operating officer, said he could not disclose how much ammo Winchester is supplying.

A few shipments also went to Belgium and Israel.

Meanwhile, most of the ammunition pictured on the website for Champion's Choice, a gun store in LaVergne, Tennessee, is listed as "out of stock."

"We keep ammo on order but we're not sure when it's going to come available, "sales manager Kyle Hudgens said. "It does put us in a bad position with our customers. They're asking what the deal is."

And Bryan Lookabaugh at Renton Fish & Game's skeet and trap range in Renton, Washington -- where shooters try to hit discs flying at 35 to 70 mph -- said the limited availability means fewer people show up for shooting practice and some couldn't participate in a recent competition.

"We have not had a full shipment in a year," he said.

Duane Hendrix, the range master at the Seattle Police Athletic Association, a police and civilian gun range in Tukwila, Washington, said he now limits ammo sales to two boxes per customer.

"I've never seen anything like it before," Hendrix said. "There's stuff we can't get, especially rifle ammo. If you don't have ammo for your customers, there's no point in having your doors open."

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)
Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - A material point of fact or law was overlooked in the decision;
  - A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ► Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ► The proceeding involves a question of exceptional importance; or
- ► The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- A response, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or response must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send an email or letter **in writing within 10 days** to:
  - ► Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Maria Evangelista (maria.evangelista@tr.com));
  - ► and electronically file a copy of the letter via the appellate ECF system by using "File Correspondence to Court," or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 10. Bill of Costs

Instructions for this form: http://www.ca9.uscourts.gov/forms/form10instructions.pdf

9th Cir. Case Number(s)

Case Name

The Clerk is requested to award costs to *(party name(s))*:

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

Signature **Date**

*(use "*s/[typed name]*" to sign electronically-filed documents)*

COST TAXABLE	**REQUESTED** *(each column must be completed)*			
DOCUMENTS / FEE PAID	No. of Copies	Pages per Copy	Cost per Page	TOTAL COST
Excerpts of Record*			$	$
Principal Brief(s) *(Opening Brief; Answering Brief; 1st, 2nd , and/or 3rd Brief on Cross-Appeal; Intervenor Brief)*			$	$
Reply Brief / Cross-Appeal Reply Brief			$	$
Supplemental Brief(s)			$	$
Petition for Review Docket Fee / Petition for Writ of Mandamus Docket Fee / Appeal from Bankruptcy Appellate Panel Docket Fee				$
			TOTAL:	$

***Example:** Calculate 4 copies of 3 volumes of excerpts of record that total 500 pages [Vol. 1 (10 pgs.) + Vol. 2 (250 pgs.) + Vol. 3 (240 pgs.)] as:*
No. of Copies: 4; Pages per Copy: 500; Cost per Page: $.10 (or actual cost IF less than $.10);
TOTAL: 4 x 500 x $.10 = $200.

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov