

Case No. 23-55276

In the United States Court of Appeals
for the Ninth Circuit

LANCE BOLAND; MARIO SANTELLAN; RENO MAY; JEROME SCHAMMEL AND
CALIFORNIA RIFLE & PISTOL ASSOCIATION, INCORPORATED,
Plaintiffs-Appellees,

V.

ROB BONTA,
in his official capacity as Attorney General of the State of California,
Defendant-Appellant.

On Appeal from the United States District Court
for the Central District of California
Case No. 22-cv-1421-CJC-ADS

**PLAINTIFFS-APPELLEES' MOTION TO TAKE JUDICIAL NOTICE IN
SUPPORT OF THEIR OPPOSITION TO APPELLANT'S EMERGENCY
MOTION UNDER CIRCUIT RULE 27-3 FOR A PARTIAL STAY OF THE
PRELIMINARY INJUNCTION PENDING APPEAL AND FOR AN
INTERIM ADMINISTRATIVE STAY ENTERED BEFORE APRIL 3, 2023;**

C.D. Michel
Anna M. Barvir
Alexander A. Frank
Konstadinos T. Moros
MICHEL & ASSOCIATES, P.C.
180 E. Ocean Blvd., Suite 200
Long Beach, CA 90802
(562) 216-4444
cmichel@michellawyers.com

Attorneys for Plaintiffs-Appellees

March 30, 2023

MOTION TO TAKE JUDICIAL NOTICE

Under Federal Rule of Evidence 201, Plaintiffs-Appellees Lance Boland, Mario Santellan, Reno May, Jerome Schammel, and California Rifle and Pistol Association, Incorporated, respectfully request that the Court take judicial notice of the following documents in support of Plaintiffs' opposition to Appellant's emergency motion:

1. Disease Control and Prevention, National Center for Health

Statistics. National Vital Statistics System, Unintentional Firearm Mortality 1999-2020 on CDC WONDER Online Database, released in 2021. Data are from the Multiple Cause of Death Files, 1999-2020, as compiled from data provided by the 57 vital statistics jurisdictions through the Vital Statistics Cooperative Program. Accessed at <http://wonder.cdc.gov/ucd-icd10.html> on Mar 30, 2023 4:28:53 PM. A true and correct copy of this document is attached as Exhibit A.

Under the Federal Rules of Evidence, at any stage of the proceedings, the Court may take judicial notice of any fact "that is not subject to reasonable dispute because it ... is generally known within the trial court's territorial jurisdiction," or "can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned." Fed. Rules Evid. 201(b). A court shall take judicial notice of such a fact if requested by a party and supplied with the necessary information. Fed. R. Evid. 201(d). Such a fact may be judicially noticed by an Appellate Court, even though notice was not taken by trial court, since under Rule 201(d) judicial notice may be taken at "any stage of proceeding." *Gov't of Canal Zone v. Burjan*, 596 F.2d 690, 694 (5th Cir. 1979).

The data offered as Exhibit A is national data collected by the Centers for Disease Control and Prevention (CDC) pertaining to unintentional firearm mortality by year, and so it can be "accurately and readily determined from sources whose accuracy cannot be reasonably questioned." Fed. Rules Evid. 201(b)(2). See also *United*

States v. Esquivel, 88 F.3d 722 (9th Cir. 1996) (Appellate court could take judicial notice of census data showing number of Hispanics eligible for jury service, in resolving challenge to jury selection procedures; census documents were not subject to reasonable dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.) This Court should take judicial notice of this CDC data.

Dated: March 30, 2023

Respectfully submitted,

MICHEL & ASSOCIATES, P.C.

s/Alexander A. Frank

Alexander A. Frank

*Attorneys for Plaintiffs-Appellees Lance Boland;
Mario Santellan; Reno May; Jerome Schammel
And California Rifle & Pistol Association,
Incorporated*

EXHIBIT A

CDC WONDER

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Underlying Cause of Death, 1999-2020 Results

Deaths occurring through 2020

Year	Deaths	Population	Crude Rate Per 100,000
1999	824	279,040,168	0.3
2000	776	281,421,906	0.3
2001	802	284,968,955	0.3
2002	762	287,625,193	0.3
2003	730	290,107,933	0.3
2004	649	292,805,298	0.2
2005	789	295,516,599	0.3
2006	642	298,379,912	0.2
2007	613	301,231,207	0.2
2008	592	304,093,966	0.2
2009	554	306,771,529	0.2
2010	606	308,745,538	0.2
2011	591	311,591,917	0.2
2012	548	313,914,040	0.2
2013	505	316,128,839	0.2
2014	461	318,857,056	0.1
2015	489	321,418,820	0.2
2016	495	323,127,513	0.2
2017	486	325,719,178	0.1
2018	458	327,167,434	0.1
2019	486	328,239,523	0.1
2020	535	329,484,123	0.2
Total	13,393	6,746,356,647	0.2

Notes:

Caveats: As of April 3, 2017, the underlying cause of death has been revised for 125 deaths in 2014. [More information.](#) ([/wonder/help/ucd.html#2014-Revision](#))

Circumstances in Georgia for the years 2008 and 2009 have resulted in unusually high death counts for the ICD-10 cause of death code R99, "Other ill-defined and unspecified causes of mortality." Caution should be used in interpreting these data. [More information.](#) ([/wonder/help/ucd.html#Georgia-Reporting-Anomalies](#))

Circumstances in New Jersey for the year 2009 have resulted in unusually high death counts for the ICD-10 cause of death code R99, "Other ill-defined and unspecified causes of mortality" and therefore unusually low death counts in other ICD-10 codes, most notably R95, "Sudden Infant Death Syndrome" and X40-X49, "Unintentional poisoning." Caution should be used in interpreting these data. [More information.](#) ([/wonder/help/ucd.html#New-Jersey-Reporting-Anomalies](#))

Circumstances in California resulted in unusually high death counts for the ICD-10 cause of death code R99, "Other ill-defined and unspecified causes of mortality" for deaths occurring in years 2000 and 2001. Caution should be used in interpreting these data. [More information.](#) ([/wonder/help/ucd.html#California-Reporting-Anomalies](#))

The population figures for year 2020 are bridged-race estimates of the July 1 resident population, from the Vintage 2020 postcensal series released by NCHS on September 22, 2021. The population figures for year 2019 are bridged-race estimates of the July 1 resident population, from the Vintage 2019 postcensal series released by NCHS on July 9, 2020. The population figures for year 2018 are bridged-race estimates of the July 1 resident population, from the Vintage 2018 postcensal series released by NCHS on June 25, 2019. The population figures for year 2017 are bridged-race estimates of the July 1 resident population, from the Vintage 2017 postcensal series released by NCHS on June 27, 2018. The population figures for year 2016 are bridged-race estimates of the July 1 resident population, from the Vintage 2016 postcensal series released by NCHS on June 26, 2017. The population figures for year 2015 are bridged-race estimates of the July 1 resident population, from the Vintage 2015 postcensal series released by NCHS on June 28, 2016. The population figures for year 2014 are bridged-race estimates of the July 1 resident population, from the Vintage 2014 postcensal series released by NCHS on June 30, 2015. The population figures for year 2013 are bridged-race estimates of the July 1 resident population, from the Vintage 2013 postcensal series released by NCHS on June 26, 2014. The population figures for year 2012 are bridged-race estimates of the July 1 resident population, from the Vintage 2012 postcensal series released by NCHS on June 13, 2013. The population figures for year 2011 are bridged-race estimates of the July 1 resident population, from the Vintage 2011 postcensal series released by NCHS on July 18, 2012. Population figures for 2010 are April 1 Census counts. The population figures for years 2001 - 2009 are bridged-race estimates of the July 1 resident population, from the revised intercensal county-level 2000 - 2009 series released by NCHS on October 26, 2012. Population figures for 2000 are April 1 Census counts. Population figures for 1999 are from the 1990-1999 intercensal series of July 1 estimates. Population figures for the infant age groups are the number of live births.

Note: Rates and population figures for years 2001 - 2009 differ slightly from previously published reports, due to use of the population estimates which were available at the time of release.

The population figures used in the calculation of death rates for the age group 'under 1 year' are the estimates of the resident population that is under one year of age. [More information.](#) ([/wonder/help/ucd.html#Age Group](#))

Help: See [Underlying Cause of Death, 1999-2020 Documentation](#) ([/wonder/help/ucd.html](#)) for more information.

Query Date: Mar 30, 2023 6:32:34 PM

Suggested Citation:

Centers for Disease Control and Prevention, National Center for Health Statistics. National Vital Statistics System, Mortality 1999-2020 on CDC WONDER Online Database, released in 2021. Data are from the Multiple Cause of Death Files, 1999-2020, as compiled from data provided by the 57 vital statistics jurisdictions through the Vital Statistics Cooperative Program. Accessed at <http://wonder.cdc.gov/ucd-icd10.html> on Mar 30, 2023 6:32:34 PM

Query Criteria:

Injury Intent:	Unintentional
Injury Mechanism & All Other Leading Causes:	Firearm
Group By:	Year
Show Totals:	True
Show Zero Values:	False
Show Suppressed:	False
Calculate Rates Per:	100,000
Rate Options:	Default intercensal populations for years 2001-2009 (except Infant Age Groups)

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2023, an electronic PDF of PLAINTIFFS-APPELLEES' MOTION TO TAKE JUDICIAL NOTICE IN SUPPORT OF THEIR OPPOSITION TO APPELLANT'S EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 FOR A PARTIAL STAY OF THE PRELIMINARY INJUNCTION PENDING APPEAL AND FOR AN INTERIM ADMINISTRATIVE STAY ENTERED BEFORE APRIL 3, 2023 was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Dated: March 30, 2023

s/Alexander A. Frank
Alexander A. Frank