

Case No. 24-542

In the United States Court of Appeals
for the Ninth Circuit

KIM RHODE, et al.
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 Southern District of California
Case No. 3:18-cv-00802-BEN-JLB
Honorable Roger T. Benitez

**DECLARATION OF SEAN A. BRADY IN SUPPORT OF APPELLEES'
OPPOSITION TO APPELLANT'S EMERGENCY MOTION TO STAY
ORDER GRANTING PERMANENT INJUNCTION PENDING APPEAL**

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February 1, 2024

DECLARATION OF SEAN A. BRADY

I, Sean A. Brady, declare:

1. I am an attorney at the law firm of Michel & Associates, P.C., attorneys of record for Plaintiffs-Appellees in this action. I am licensed to practice law before the Ninth Circuit Court of Appeals. I have personal knowledge of the facts set forth herein and, if called and sworn as a witness, could and would testify competently thereto.

2. On January 31, 2024, the Department of Justice notified all California licensed ammunition vendors of the district court's order and instructed them not to enforce the enjoined sections of the California Penal Code. A true and correct copy of that notification is attached as **Exhibit A**.

3. Also on January 31, 2024, the district court denied Defendant's motion to stay its ruling. A true and correct copy of that Order is included as **Exhibit B**.

I declare under penalty of perjury that the foregoing is true and correct.

Executed within the United States on February 1, 2024.

s/ Sean A. Brady
Sean A. Brady
Declarant

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EXHIBIT A

SUBJECT: Injunction in *Rhode, et al. v. Bonta*, Case No. 3:18-cv-00802-BEN-JLB, Relating to Ammunition Purchases

On January 31, 2024, a federal district court in the Southern District of California issued an order in *Rhode, et al. v. Bonta* (Case No. 3:18-cv-00802-BEN-JLB) that enjoined the enforcement or implementation of the following Penal Code sections relating to the purchase of ammunition:

- section 30312, subdivisions (a), (b), and (d);
- section 30314, subdivisions (a) and (c);
- section 30352;
- section 30365, subdivision (a); and
- section 30370, subdivisions (a) through (e).

The California Department of Justice (Department) is seeking an immediate stay of this injunction order from the Ninth Circuit Court of Appeals. Unless and until a stay of the district court injunction order is granted, the following guidance is in effect as of January 31, 2024:

- When processing any purchase or transfer of ammunition that is legal in California, licensed firearm dealers and ammunition vendors **shall not use** the “Submit Eligibility Check” or “Submit Ammunition Purchase(s)” functions under the “Ammunition Transactions” menu in the DROS Entry System (DES). Ammunition purchases should be completed without using these functions.
- Purchases or transfers of legal ammunition need not be conducted through a licensed firearm dealer or ammunition vendor.
- Purchases or transfers of legal ammunition need not be completed in a face-to-face transaction.
- A California resident can bring or transport into the State ammunition that was purchased or otherwise obtained from outside of the State, provided the ammunition is otherwise legal in California.
- California state and local law enforcement agencies shall not enforce the criminal punishment provisions at Penal Code section 30312, subdivision (d); section 30314, subdivision (c); and section 30365, subdivision (a).

State laws not included in the *Rhode* injunction order remain in effect, such as Penal Code section 30305 (which prohibits a person from possessing or owning ammunition if they are prohibited from possessing or owning a firearm), Penal Code section 30300 (which generally prohibits the sale of ammunition to minors), and Penal Code section 30315 (which prohibits the possession of “any handgun ammunition designed primarily to penetrate metal or armor”).

Accordingly, it remains illegal for “[a]ny person, corporation, firm, or other business enterprise” to sell or deliver ammunition to a person who, when using reasonable care, should be known to fall within Penal Code sections 30305 or 30300. (Cal. Pen. Code, §§ 30306, subd. (a), 30300, subd. (a)(3).) It also remains illegal for “[a]ny person, corporation, firm, or other business enterprise” to sell or deliver ammunition to a person known (or there is cause to believe) is not the actual purchaser of the ammunition. (Cal. Pen. Code, § 30306, subd. (b).)

If anything in this guidance changes, the Department will immediately issue another bulletin.

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KIM RHODE, et al.,
Plaintiffs,

v.

ROB BONTA, in his official capacity as
Attorney General of the State of
California,

Defendant.

Case No.: 18-cv-802-BEN (JLB)

ORDER
DENYING REQUEST FOR STAY

Defendant requests a stay of this Court’s Decision and permanent injunction pending appeal, or in the alternative, a 10-day administrative stay. The Defendant says that, “[i]f the Decision is allowed to stay in effect, it would irrevocably alter the status quo by enjoining enforcement of laws that have been in effect for over four years; allowing prohibited California residents to acquire ammunition during the appeal; and jeopardizing public safety.”

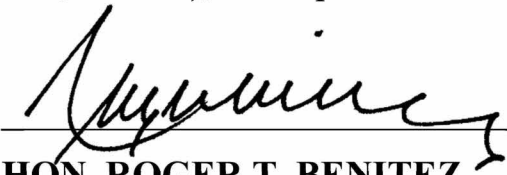
“A stay is not a matter of right, even if irreparable injury might otherwise result. It is instead ‘an exercise of judicial discretion,’ and ‘the propriety of its issue is dependent upon the circumstances of the particular case.’” *Nken v. Holder*, 556 U.S. 418, 433 (2009). In exercising its discretion, a court is to be guided by four legal principles or factors: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the

proceeding; and (4) where the public interest lies.” *Id.* “The first two factors . . . are the most critical.” *Id.* at 434. The Defendant here has not shown a strong likelihood of success on the merits, *i.e.*, the first factor, or the likelihood of irreparable injury, the second factor.

As to the first factor, the Defendant’s case on the merits is weak, failing both the interest balancing test and the history and tradition test. As to the second factor, the Defendant argues irreparable injury will occur without a stay because prohibited California residents will be able to acquire ammunition during the appeal. “[S]imply showing some ‘possibility of irreparable injury,’ fails to satisfy the second factor. . . , the ‘possibility’ standard is too lenient.” *Id.* at 434-35 (citations omitted). While there is the possibility that prohibited California residents will be able to acquire ammunition without a stay, there continues to exist criminal laws against the possession of ammunition by prohibited persons under both state and federal law. This Court’s decision in no way affects those laws and the Defendant is free to continue to enforce the same. Consequently, the second factor does not weigh in favor of a stay. The third and fourth factors weigh heavily against granting a stay as the enjoined laws are infringing on the constitutional rights of citizens.

This Court has given the State plenty of opportunity and time to provide analogues or other evidence to demonstrate the validity of its ammunition background check laws. The Decision simply requires a return to the status quo ante litem as it existed prior to the effective dates of SB1235 and Proposition 63. Having considered the relevant factors, and for many of the same reasons articulated in this Court’s Order denying a stay of the preliminary injunction order (filed Apr. 24, 2020, Dkt. 62), the request for a stay pending appeal and an administrative stay is denied.

DATED: January 31, 2024


HON. ROGER T. BENITEZ
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2024, an electronic PDF of
DECLARATION OF SEAN A. BRADY IN SUPPORT OF APPELLEES'
OPPOSITION TO EMERGENCY MOTION FOR AN IMMEDIATE
ADMINISTRATIVE STAY AND STAY PENDING APPEAL 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.

Date: February 1, 2024

MICHEL & ASSOCIATES, P.C.

s/ Sean A. Brady
Sean A. Brady
Counsel for Plaintiffs-Appellees