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January 4, 2023

VIA U.S. CERTIFIED MAIL

Yesenia Sanchez, Sheriff-Coroner
Alameda County Sheriff's Department
Administration Office
1401 Lakeside Drive, 12th Floor
Oakland, CA 94612-4305

9314 8699 0430 0102 9182 14

Alameda County Counsel's Office
1221 Oak Street, #450
Oakland, CA 94612

9314 8699 0430 0102 9184 05

Re: Alameda County's Unconstitutional CCW Permit Policies and Practices

Dear Sheriff Sanchez:

Our firm represents the California Rifle & Pistol Association (CRPA), which was founded in 1875 and has been working to uphold the right of Californians to keep and bear arms ever since. On behalf of CRPA, we would like to extend our congratulations to you on being elected Sheriff-Coroner of Alameda County. We wish you all the best as you face the challenges of that office.

Unfortunately, we did not have a productive relationship with your predecessor in his final months in office. Following the landmark decision in *New York State Rifle & Pistol Association Inc. v. Bruen*, we sent Sheriff Ahern a series of letters asking how he intended to change his CCW policies to comply with the ruling. Sheriff Ahern never responded. The most recent letter is attached here for your reference as Exhibit A. It includes a legal summary of what is and isn't constitutional in terms of carry permit policies in the wake of *Bruen*, and also covers various applicable California laws.

Since those letters, we have received unending complaints about Alameda County's permit process from CRPA's members who live in Alameda County, ranging from serious constitutional violations to invasive absurdities that violate California law. These include:

- Requiring a psychological exam, in violation of *Bruen* forbidding suitability determinations.

- Allowing only one gun to be listed on the permit, when California law clearly contemplates more than one pistol being allowed given the existence of California Penal Code section 26215(a)(1).
- Demanding photographs of home firearm storage, in violation of California Penal Code section 26175(g) and *Bruen*.
- Asking whether an applicant had home security systems or cameras at their residence, in violation of California Penal Code section 26175(g) and *Bruen*.
- Asking why an applicant needs a permit even though *Bruen* forbids “good cause” determinations.
- Requiring an applicant to inform them of the total number of firearms they own, as well as their location in the home, in violation of California Penal Code section 26175(g) and *Bruen*.
- Asking for information about the people who live in the applicant’s home, as well as information about the layout of the home, in violation of California Penal Code section 26175(g) and *Bruen*.
- Requiring proof of income, in violation of California Penal Code section 26175(g) and *Bruen*.
- Asking where applicants intend to carry in violation of California Penal Code section 26175(g) and *Bruen*.
- Charging the full application fee prior to issuance, in violation of California Penal Code section 26190(b)(2).
- Having the total processing cost be very high, despite *Bruen* warning that excessive expense in the application process is unconstitutional.

In addition to all of those issues, perhaps the most disturbing practice is just how long the Sheriff’s Office takes to process applications. We have had several applicants contact us who applied back in June following the *Bruen* decision, and their applications languish with little or no action. This violates the Supreme Court’s ruling, which explained that “because any permitting scheme can be put toward abusive ends, we do not rule out constitutional challenges to shall-issue regimes where, for example, **lengthy wait times** in processing license applications or exorbitant fees deny ordinary citizens their right to public carry.” *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. ___, 142 S. Ct. 2111, n.9 (2022) (emphasis added). This practice also violates California law, which states that permit decisions must be made within 90 days of the initial application, or 30 days after receipt of the applicant’s background check from the Department of Justice, whichever is later. Cal. Penal Code § 26205.

The right to carry a firearm for self-defense is a constitutional right. Sheriffs should not treat that finding lightly, nor disregard the laws of this state. While CRPA has been more than reasonable in giving your predecessor breathing room to adjust the Department’s policies

following the ruling, it has now been over six months with little progress to show for it. Because of that, we are preparing to initiate a lawsuit against the Sheriff's Department. We have only held off doing so at this late hour because we are hopeful that there is some chance you intend to correct your predecessor's errors and quickly bring the Sheriff's Office into compliance. Perhaps this can be a fresh start, instead of the beginning of costly and time-consuming litigation.

A draft of our complaint is attached as Exhibit B. Please respond within 14 days of your receipt of this letter with confirmation that the Alameda County Sheriff's Department will end its unconstitutional and illegal policies and practices in a timely manner. To the extent the Alameda County Sheriff's Department under your leadership intends to do just that, CRPA is happy to offer its guidance and assistance on any questions the Sheriff's Department may have. If we do not receive any response, or if your response indicates that you intend to continue Sheriff Ahern's policies and practices, then we will file the complaint forthwith.

Sincerely,
Michel & Associates, P.C.

A handwritten signature in black ink, appearing to read "Konstadinos T. Moros". The signature is written in a cursive, flowing style.

Konstadinos T. Moros

EXHIBIT A

SENIOR PARTNER
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September 16, 2022

VIA U.S. CERTIFIED MAIL

Gregory J. Ahern, Sheriff-Coroner
Alameda County Sheriff's Office
Administration Office
1401 Lakeside Drive, 12th Floor
Oakland, CA 94612-4305

**Re: FINAL WARNING TO COMPLY WITH THE SUPREME
COURT'S *BRUEN* RULING; PRE-LITIGATION DEMAND**

Dear Sheriff Ahern:

Our firm represents the California Rifle & Pistol Association (CRPA), which was founded in 1875 and has been working to uphold the right of Californians to keep and bear arms for nearly 150 years. We write to you today because numerous individuals have contacted CRPA to report that various police and sheriffs' departments, including yours, have been delaying conceal carry weapon permit issuance. Such obstruction constitutes open defiance of the Supreme Court's recent landmark ruling in *N.Y. State Rifle & Pistol Association v. Bruen*. The issues we have heard CRPA members repeatedly raise include unclear processes on how to apply for permits, endless wait times, subjective requirements, application procedures that violate applicants' privacy, and in some cases, the refusal to even accept applications for processing.

This may not be the first time we have contacted you, as prior letters that were sent to most departments laid out a summary of the Supreme Court's ruling, and also corrected several misstatements of the law issued in a legal alert by Attorney General Bonta. In addition, since our last letter the California Legislature tried and failed to pass Senate Bill 918¹, which would have added a number of unconstitutional limitations on the right to bear arms.² To the extent that your

¹ According to a few elected officials, a bill similar to SB 918 is going to be reintroduced in the next legislative session. CRPA had a drafted lawsuit ready to challenge SB 918, and should it return in any form, CRPA will file that lawsuit before the Governor's signature is dry.

² A law in New York that just took effect is quite similar to what SB 918 would have been, and it is already facing several lawsuits. While there has so far been only one federal court ruling on that law, and that ruling was a dismissal on standing grounds, the court in that matter did also give its thoughts on the merits of New York's law in the event its ruling as to standing was reversed on appeal. *Antonyuk v. Bruen*, No. 1:22-CV-0734 (GTS/CFH), 2022 U.S. Dist. LEXIS

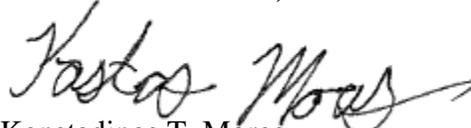
department was stalling until that bill passed, it is past time to cease such bad faith delays and begin issuing permits in a timely fashion.

Attached to this letter you will find guidance on why certain policies and practices in handling CCW permit applications are unconstitutional. To the extent your department is engaging in some or all of these, it must cease doing so immediately. As a public official that took the oath to uphold the Constitution, it is your solemn vow to follow the rule of law, uphold the foundations of the Constitution as ordered by the Supreme Court, and issue concealed carry licenses to those meeting the non-subjective requirements in California law.

In our earlier letters we stated that CRPA would be patient as departments transitioned to shall-issue permitting systems. So long as your department was acting in good faith to quickly honor the *Bruen* ruling, we would not institute legal action. We have received enough complaints from CRPA members to know that you have not significantly moved to comply with *Bruen* in the nearly three months since the Court's ruling. This is your final warning to quickly implement a permitting process in accordance with both California law as well as the Supreme Court's ruling. CRPA requests that you promptly respond in the next week with a detailed and reasonable plan of how you intend to bring your department into compliance within the next **45 days**. As long as this plan is in line with the *Bruen* decision and the Constitution generally, we will support your department and offer assistance in working with you to bring about the appropriate change. If you continue to delay the issuance of concealed carry permits in violation of the law as outlined in the attached summary, CRPA is giving notice that legal action will be taken against these violations.

Should you have any questions regarding this letter or the attached Summary of Constitutionality of California's Gun Laws and Practices Post-*Bruen*, please feel free to reach out to our office.

Sincerely,
Michel & Associates, P.C.



Konstadinos T. Moros

157874, at *102 (N.D.N.Y. Aug. 31, 2022) ("*Antonyuk*"). Portions of the *Antonyuk* ruling are referenced in this letter's attachment, as it is the earliest persuasive authority we have post-*Bruen* in regard to the right to carry.



SUMMARIZING CALIFORNIA’S CARRY LAWS AND CONSTITUTIONAL PRACTICES POST-*BRUEN*

I. California Law Prior to The *Bruen* Decision

California law lists the following requirements for the issuance of licenses to carry concealed weapons:

“(a) When a person applies for a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person, the sheriff of a county may issue a license to that person upon proof of all of the following:

(1) The applicant is of good moral character.

(2) Good cause exists for issuance of the license.

(3) The applicant is a resident of the county or a city within the county, or the applicant’s principal place of employment or business is in the county or a city within the county and the applicant spends a substantial period of time in that place of employment or business.

(4) The applicant has completed a course of training as described in Section 26165.”

Pen. Code, § 26150, subd. (a) (*see also* Pen. Code, § 26155, subd. (a) [referring to the same requirements, but for when a City Police Department handles permit issuance]).

While the Supreme Court’s decision allows most of California’s statutory requirements to stand *so long as they are not abused*, subsection (a)(2), relating to “good cause” is now no longer valid.

II. The Supreme Court’s Decision Eliminates The “Good Cause” Requirement

The Supreme Court ruled in the landmark case of *New York State Rifle & Pistol Association Inc. v. Bruen* that the state of New York’s denial of petitioners’ applications for concealed-carry licenses for lack of “proper cause” under New York’s licensing requirements “violated the Second Amendment.”

Like California, the New York law prohibited ordinary law-abiding citizens from carrying a handgun outside the home without a license, and it denied licenses to every citizen who failed to convince the state that he or she has “proper cause” to carry a firearm. That NY law has now been struck down because the “proper-cause requirement violates the Fourteenth Amendment in that it prevents law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms.” *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2156 (2022) (“*Bruen*”).



In the opinion of the Court, Justice Thomas explained that permit regimes that “do not require applicants to show an atypical need for armed self-defense” are acceptable. *Bruen*, 142 S. Ct. 2111 at n.9.

So the “shall-issue” regimes that exist in 43 states are permissible, but those of New York, California, and several others that require applicants to convince issuing authorities of “good cause” or “proper cause” are not.

Attorney General Bonta has already admitted that California’s requirement for “good cause” is no longer allowed under this precedent decision: “California similarly requires applicants for licenses to carry firearms in public to show “good cause,” and is likely unconstitutional under *Bruen*.”¹ Issuing authorities may not require good cause.

And as discussed below, any subjective requirements, including those previously applied by some issuing authorities regarding California’s “good moral character” requirement, are likewise unconstitutional under *Bruen*.

A. Publication Of A “Good Cause” Policy Is Still Required

Penal Code section 26160 requires CCW issuing authorities to publish their good cause policy for the public. CRPA suggests that whatever good cause policy departments currently have posted be revised as follows:

“Per the Supreme Court’s ruling in *New York State Rifle & Pistol Association v. Bruen*, requiring an applicant to establish ‘good cause’ to get a carry permit is unconstitutional. To comply with the that ruling, we will no longer enforce this requirement or require applicants to demonstrate “good cause” to qualify for a license to carry a firearm.”

It is not acceptable to leave an expired good cause policy posted.

III. The “Good Moral Character” Requirement Cannot be Used to Re-Insert Subjectivity Into The Application Process

As referenced above, on June 24th Attorney General Bonta sent out a Legal Alert notifying issuing authorities that requiring “good cause” is now unconstitutional and advising that the requirement of “good cause” should be dropped from the CCW application process. Unfortunately, in the alert the Attorney General appeared to suggest local officials could apply a heightened “good moral character” requirement to applicants in ways that would be unconstitutional under the Supreme Court’s ruling.

As mentioned above, under California law, applicants issued CCW permits must have “good moral character”. Pen. Code, § 26150, subd. (a); *see also* Pen. Code, § 26155, subd. (a) (referring

¹ <https://oag.ca.gov/news/press-releases/attorney-general-bonta-affirms-his-support-commonsense-gun-laws-response-supreme>



to the same requirements, but for when a City Police Department handles permit issuance). In the past, those jurisdictions that issued CCWs in California prior to *Bruen* appeared to limit the application of this requirement to a person’s criminal history. But even then, denials for lack of “good moral character” were relatively rare, and usually reserved for people with extensive criminal history or repeated contacts with law enforcement.

As the Court stated in *Bruen*, shall-issue systems which limit permits to “law-abiding, responsible citizens” are acceptable. *Bruen*, 142 S. Ct. 2111, at n.9. But this does not mean that issuing authorities can apply any subjective or biased standard regarding the “good moral character” requirement. Instead, for an issuing authority’s “good moral character” standard to be constitutionally permissible, it must have a narrow, *objective* meaning.

A. Only “Narrow, Objective, and Definite” Standards are Acceptable

Some departments have taken to using the “good moral character” requirement as a new way to exercise unacceptable discretion over permit issuance. In his Legal Alert, the Attorney General laid out several “suggestions” of how issuing authorities could abuse the good moral character requirement. These included things like disqualifying people with any arrest in the last five years (regardless of disposition), as well as evaluating completely subjective measures like “honesty, trustworthiness, diligence, reliability, respect for the law, integrity, candor, discretion, financial stability”,² and more.

None of that is acceptable. Such a standard would be entirely subjective, and *subjectivity is not allowed.*

All that *Bruen* allows for under an objective “good moral character” standard is that issuing authorities may conduct a background check to confirm that the applicant has nothing that would constitute moral turpitude or a record that would disqualify them from bearing arms.

As the Supreme Court explained:

Rather, it appears that these shall-issue regimes, which often require applicants to undergo a background check or pass a firearms safety course, are designed to ensure only that those bearing arms in the jurisdiction are, in fact, “law-abiding, responsible citizens.” *Ibid.* And they likewise appear to contain **only “narrow, objective, and definite standards”** guiding licensing officials, *Shuttlesworth v. Birmingham*, 394 U. S. 147, 151 (1969), **rather than requiring the “appraisal of facts, the exercise of judgment, and the formation of an opinion,”** *Cantwell v. Connecticut*, 310 U. S. 296, 305 (1940)—features that typify proper-cause standards like New York’s.”

Bruen, 142 S. Ct. 2111, at n.9 (emphasis added).

² In his legal alert, the Attorney General claimed the Riverside County Sheriff’s Department uses these subjective measures, but CRPA has not been able to find any evidence of this.



Furthermore, a federal court in New York recently explained that

“the Second Amendment right in question is still one of self-defense, and licensing officials may not arbitrarily abridge it based on vague, subjective criteria. Rather, the purpose of the open-ended discretion is more objectively achieved through the requirement of fingerprinting, a background check, a mental health records check, and training in firearms handling and in laws regarding the use of force.”

Antonyuk v. Bruen, No. 1:22-CV-0734 (GTS/CFH), 2022 U.S. Dist. LEXIS 157874, at *80-81 (N.D.N.Y. Aug. 31, 2022) (“*Antonyuk*”).

IV. Demanding Character References, Employer Notification, Social Media Postings, and Psychological Exams Violates *Bruen* and California Law

A. *Bruen* Standard

As explained above, discretion to “deny licenses based on a perceived lack of need *or suitability*” is impermissible. *Bruen*, 142 S. Ct. at 2123, italics added. Suitability determinations rely exclusively on subjective inquiries. That means that practices like asking for character references, inquiring about the application with the applicant’s employer, digging through applicants’ social media, and psychological exams are all unacceptably subjective, if not outright arbitrary requirements.

As the federal judge in the *Antonyuk* case explained as to social media searches,

“...a citizen's Fifth Amendment right would be surrendered if he or she were compelled to disclose self-incriminating statements on a social-media posting in order to exercise his or her Second Amendment right...[the government] has adduced no historical analogues requiring persons to disclose their published political pamphlets (which might be considered to be akin to a social-media posting), or their personal correspondence (which might be akin to a private message, or a message to a restricted group, on social media).”

Antonyuk, 2022 U.S. Dist. LEXIS 157874, at *85-86.³

Applicants must already pass a DOJ background check for their permit process, on top of the background check they did when they bought their firearms. There is no constitutional need for extensive moral character inquiries beyond that.

³ The *Antonyuk* Court only didn’t find a violation with New York’s character reference requirement because the Plaintiff in that case testified it was not arduous for *him* to get character references. For any individuals for whom such references would be a burden, requiring references is unlikely to pass muster.



B. California Law

State law says that the only information that may be required of applicants is what is stated in BOF form 4012. “An applicant shall not be required to complete any additional application or form for a license, *or to provide any information other than that necessary to complete the standard application form described in subdivision (a)*, except to clarify or interpret information provided by the applicant on the standard application form.” Cal. Penal Code § 26175, subd. (g), italics added.

Character references and requiring disclosure to the employer that the applicant seeks a permit (or asking that employer for its opinion of the applicant) are not on the form and may not be required.⁴

In addition to going beyond the scope of what is permissible with the good moral character requirement, asking for character references or notifying employers also violates an applicant’s privacy. Applicants may understandably not want people, including their employer, to know they are applying for a carry permit. And even if there were no privacy concerns, issuing authorities cannot simply “outsource” subjectivity on permit issuance to applicants’ employers or anyone else. Such individuals may be personally opposed to the right to bear arms and thus have non-objective motivations to undermine the application.

CRPA has also been made aware of some issuing authorities demanding applicants provide pictures of at-home firearm storage to assure compliance with California’s negligent storage laws. Setting aside the fact that at-home storage of a firearm has no bearing on a CCW holder carrying a firearm *outside* their home, this is another example of an impermissible requirement. What’s more, such a requirement fails to understand that California’s restriction does not mandate a particular form of at-home storage, making such a requirement meaningless.⁵

V. CCW Permit Applications Must Be Accepted.

Any department that isn’t even *accepting* applications is violating a constitutional right. “The Second and Fourteenth Amendments protect an individual’s right to carry a handgun for self-defense outside the home.” *Bruen*, 142 S. Ct. at 2122. Despite the clarity of the Supreme Court’s ruling, too many people have informed us that when they contact their local sheriff’s or police departments to ask how they can apply for a CCW permit, they are either ignored or told the department isn’t accepting applications. In some situations, applications are accepted, but never processed, which is equally impermissible.

⁴ Psychological testing is permitted on form 4012 but is likely unconstitutional under *Bruen* as a forbidden subjective “suitability” determination.

⁵ Instead, California law prohibits the storage of a firearm in a manner where the person “knows or reasonably should know” a child or prohibited person can gain access to the firearm. How a person stores their firearm to prevent such access is left up to the individual. Nor does the requirement even apply to persons who live without children or prohibited persons and who do not allow access to their home by children or prohibited persons.



CRPA understands that establishing a CCW permit processing system is a burden, particularly for departments that violated the right to carry for decades by only giving CCW permits to the rich, famous, and well-connected. But the *government* is the one insisting on permits for the exercise of a constitutional right, not the applicants. Given that the government insists on CCW permits instead of embracing constitutional carry as 25 other states have, it cannot complain that processing applications is too burdensome.

VI. Future Plans to Implement Permit Application Software Cannot Be Used to Deny Permits Now.

CRPA understands that some departments are in the process of adopting the “Permitium” software that many counties are already using, and that may be the reason for current delays. CRPA fully supports any software that makes applying for a carry permit a more seamless process for applicants. However, in the meantime, departments must still accept the standard Bureau of Firearms form 4012⁶ by mail or in person. Under Penal Code section 26175, the Attorney General must prescribe a statewide standard application form for a CCW license, and “an applicant shall not be required to complete any additional application or form for a license.” Cal. Penal Code § 26175, subd. (g). Permitium is acceptable to the extent it merely serves as a more convenient way to complete the required DOJ application. But the form must still be accepted too, as per state law.

VII. Excessive Application Processing Times and Charging Excessive Application Fees Violate Both *Bruen* and State Law.

The Supreme Court explained that “lengthy wait times in processing license applications” are “abusive”. *Bruen*, 142 S. Ct. 2111, at n.9. Moreover, California law states that permit decisions must be made within 90 days of the initial application, or 30 days after receipt of the applicant’s background check from the Department of Justice, whichever is later. Cal. Penal Code § 26205.⁷

Despite this, many people have informed CRPA that their applications have been in process for well beyond 90 days, and shamefully, some have been waiting for *over a year*.

Such delay would never be acceptable for other constitutional rights, and so it isn’t acceptable with the right to bear arms. The Second Amendment right to bear arms is no longer to be treated as a “disfavored” right. *Peruta v. California*, 137 S.Ct. 1995, 1999 (2017) (Thomas J., dissenting from denial of certiorari.). Departments are required to speedily issue CCW permits both under *Bruen* as well as under state law.

The Supreme Court similarly explained that excessive application fees are likewise unconstitutional. *Bruen*, 142 S. Ct. 2111, at n.9. Issuing authorities are only permitted to charge a

⁶ A copy can be found here: https://lasd.org/wp-content/uploads/2022/08/CCW_BOF_4012_Rev_08.2022.pdf

⁷ This has been perhaps one of the most ignored laws on the books. Applicants were terrified that if they cited to it, issuing authorities would just deny their application. Following *Bruen*, it may not be ignored any longer.



fee “in an amount equal to the reasonable costs for processing” new applications.⁸ By necessity, this requires the issuing authority to first determine what its processing costs are. And only the first 20 percent of this fee may be collected upon the submission of the application.⁹ The remaining fee can only be collected upon issuance of the license. Which means that if the application is denied for any reason, the remaining 80 percent of the fee cannot be charged to the applicant.

VIII. While Sheriff’s Departments May Require Applicants to Apply with the Police Department for Their City of Residence First, They Must Accept Applications From People Already Denied by a City Police Department.

In California, only the sheriff of a county or the chief or other head of a municipal police department of a city or city and county may issue a CCW. To be issued a CCW by a sheriff, the applicant must be a resident of the county, or have a principal place of employment or business within the county and spend a substantial period of time in that place of employment or business.¹⁰ But to be issued a CCW by a chief or other head of a municipal police department, the applicant must be a resident of that city.¹¹

California law allows for sheriffs and the chief or other head of a municipal police department to enter into agreements with each other to process CCW applications.¹² But if an applicant is denied by a municipal police department, the sheriff of the county would arguably still be obligated to process a subsequent CCW application from the applicant. This is because the applicant would be applying as a resident of the county, and/or potentially as having a principal place of employment or business in the county.

In sum, while it is permissible for a Sheriff to first require applicants to apply with their local municipal police department, a Sheriff must still ultimately accept applications from anyone who is a resident or has a principal place of business in their county.

IX. A Training Class and Shooting Qualification Is Permissible But Cannot Exceed 16 Hours Total for First-Time Applicants.

Per Penal Code section 26165, a training course that is at least 8 hours in length (but not more than 16) is required. For renewal applicants, the minimum length drops to 4 hours.

⁸ P.C. § 26190(b)(1). As applied to renewal applications, licensing authorities may only charge a fee up to \$25 to process a renewal. P.C. § 26190(c). Although the fees may be increased at a rate not to exceed any increase in the California Consumer Price Index, initial application fees must still be equal to the processing costs, and in no event can a renewal fee exceed \$25.

⁹ P.C. § 26190(b)(2).

¹⁰ P.C. § 26150(a)(3).

¹¹ P.C. § 26155(a)(3).

¹² P.C. §§ 26150(c), 26155(c).



The course shall include instruction on firearm safety, firearm handling, shooting technique, and laws regarding the permissible use of a firearm, and also must include live-fire shooting exercises on a firing range and shall include a demonstration by the applicant of safe handling of, and shooting proficiency with, each firearm that the applicant is applying to be licensed to carry.

X. CCWs and Public Record Requests

To a limited extent, information contained in CCW applications are considered public records under California law. *CBS, Inc. v. Block* (1986) 42 Cal. 3d 646, 652. *But the names and personal information of a CCW holder are not.* Cal. Gov. Code § 6254, subd. (u)(1).

This means that if an issuing authority receives a public records request for CCW applications it has processed, it must disclose that information but only after redacting the names, street addresses, and any other personal information of the applicant.

#CRPA.ORG#



EXHIBIT B

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9 Attorneys for Plaintiffs California Rifle & Pistol Association, Incorporated, Gun
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14

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 CALIFORNIA RIFLE & PISTOL
18 ASSOCIATION, INCORPORATED;
SECOND AMENDMENT
19 FOUNDATION; GUN OWNERS OF
CALIFORNIA, INC.; PLAINTIFF1,
20 an individual,

21 Plaintiffs,

22 v.

23 SHERIFF-CORONER YESENIA
SANCHEZ, in her official capacity;
24 ROBERT BONTA, in his official
capacity as Attorney General of the
25 State of California; and DOES 1-10,

26 Defendants.
27

CASE NO:

**[DRAFT] COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

42 U.S.C. §§ 1983 & 1988

28 ¹ The actual name of PLAINIFF1 is omitted from this draft to protect his privacy
until there is no choice left but to file this lawsuit.

1
2 **INTRODUCTION**

3 1. Oakland is a violent city, as it finished 2021 with 134 killings², giving
4 it a per-capita homicide rate of approximately 31 per 100,000 people. People who
5 live in Oakland thus face violence not unlike that of a third-world country. One
6 recent study that examined 182 cities in America ranked Oakland as the eighth most
7 dangerous city in the country.³

8 2. Given this ever-present danger, many peaceable people in Oakland and
9 the surrounding county of Alameda have long been interested in obtaining
10 concealed carry weapons (“CCW”) permits, as provided for in California Penal
11 Code section 26150, to exercise their right of self-defense beyond their homes and
12 residences. Historically, most people know that Alameda’s Sheriff never issues
13 permits except to the wealthy and the well-connected, so they don’t bother
14 applying. Of 335 applications for CCW permits filed in 2019, the Sheriff approved
15 just 95, and denied 9. The remaining 231 applications were simply ignored.⁴

16 3. Alameda was empowered to arbitrarily ignore or deny the majority of
17 applications it received because California Penal Code section 26150 granted
18 Sheriff’s Departments the authority to determine whether “good cause exists for

19 ² See CBS San Francisco, *Oakland Records Plague of Homicides, Violent Crime in*
20 *2021*, (December 31, 2021, 9:14 PM), <<https://www.cbsnews.com/sanfrancisco/news/oakland-records-plague-homicides-violent-crime-2021/>> (as of
21 October 27, 2022) “Oakland saw a dramatic rise in violence in 2021. The police
22 department reported shootings, assaults, robberies and burglaries all went up
compared to 2020. The city finished the year with the highest homicides in 15
years: 134 killings compared to 148 killings in 2006.” *Id.*

23 ³ See Lawrence Richard, *San Bernardino, Oakland and Los Angeles, California*
24 *ranked among US's most dangerous cities: study*, Fox News, (October 12, 2022,
25 6:04 AM), <<https://www.foxnews.com/us/san-bernardino-oakland-los-angeles-california-ranked-among-uss-most-dangerous-cities-study>> (as of October 27,
2022).

26 ⁴ See Rachel Swan, *As Oakland reels from gun violence, some see personal*
27 *firearms as part of the solution*, San Francisco Chronicle, (August 12, 2021, 4:00
28 AM), <<https://www.sfchronicle.com/eastbay/article/As-Oakland-reels-from-gun-violence-some-see-16380728.php>> (as of October 27, 2022).

1 issuance of the [CCW permit].” Despite this requirement, in practice, most counties
2 in California considered a desire to carry for lawful self-defense purposes sufficient
3 “good cause” to issue a permit. Unfortunately, Alameda is not among that majority.

4 4. The Alameda County Sheriff’s Department is particularly hostile to the
5 idea that there is any right to bear arms in the Constitution. Indeed, until very
6 recently, their website outright denied it, stating: “California is a ‘May Issue’ state;
7 the decision to grant a CCW license is at the discretion of the County Sheriff or
8 Police Chief. Having a CCW license is a privilege, not an entitlement, and the
9 Courts have ruled that a California CCW license is not guaranteed to all persons
10 under the 2nd Amendment of the United States.” The website thus essentially
11 boasted that the Sheriff’s Department was enforcing unconstitutional restrictions on
12 the right to bear arms, and indeed, denied that any such right even existed.

13 5. Unfortunately for Alameda and a handful of other gun-hating counties,
14 the Supreme Court has explained that the Second Amendment guarantees a
15 preexisting right to both “keep” and “bear” arms. The Court unequivocally
16 confirmed “that the Second and Fourteenth Amendments protect an individual’s
17 right to carry a handgun for self-defense outside the home.” *N.Y. State Rifle &*
18 *Pistol Association v. Bruen*, 597 U.S. ___, 142 S. Ct. 2111, 2122 (2022) (“*Bruen*”).

19 6. Anticipating recalcitrant jurisdictions, the Court also stated that
20 “because any permitting scheme can be put toward abusive ends, we do not rule out
21 constitutional challenges to shall-issue regimes where, for example, lengthy wait
22 times in processing license applications or exorbitant fees deny ordinary citizens
23 their right to public carry.” *Id.*

24 7. California politicians, including Attorney General Bonta, were enraged
25 at the Supreme Court for forbidding the subjective “good cause” standard under
26 which millions were wrongly denied their constitutional right to carry. Only a short
27 time after the Court’s ruling, the Department of Justice leaked the names and
28 addresses of hundreds of thousands of individuals with CCW permits, including

1 thousands of judges and other public officials, exposing them to danger.⁵ The
2 Attorney General’s office, claiming this was all an accident, is now investigating
3 itself.

4 8. Some Sheriffs made their contempt for the ruling known. San
5 Francisco’s Sheriff proudly put out a statement boasting he had not issued a single
6 permit since taking office over two years prior. *See* <[https://twitter.com/SheriffSF/
7 status/1540135022841122816](https://twitter.com/SheriffSF/status/1540135022841122816)> (as of October 28, 2022). While the Alameda
8 County Sheriff’s Department did not boast about its pride in violating its residents’
9 rights, it took a simpler approach: the Department simply refused to process any
10 applications at all for months after *Bruen*. Plaintiff CRPA sent Alameda numerous
11 letters explaining why it had to issue permits and what practices were and were not
12 acceptable, and Alameda ignored them all without a response.

13 9. While the CCW page of the Alameda County Sheriff’s Department’s
14 website was edited to remove the language that claimed there was not a right to
15 carry, it now includes all sorts of other requirements. The website explains that
16 applicants will have to provide references, and information about family, co-
17 workers, and others. Apparently unaware that *Bruen* explicitly forbids suitability
18 determinations, it says all of this information is required “to determine your
19 suitability to carry a concealed weapon.” *See* <[https://www.alamedacountysheriff
20 .org/services/ccw-request](https://www.alamedacountysheriff.org/services/ccw-request)> (as of October 28, 2022).

21 10. Alameda initially appeared to be waiting for the State Legislature to
22

23 ⁵ *See* Katy Grimes, “Assemblyman Patterson Makes Audit Request of Calif. DOJ
24 *Over Leaked Gun Owners List*”, The California Globe, (July 19, 2022, 12:07 PM),
25 <[https://californiaglobe.com/fr/assemblyman-patterson-makes-audit-request-of-
26 calif-doj-over-leaked-gun-owners-list/](https://californiaglobe.com/fr/assemblyman-patterson-makes-audit-request-of-calif-doj-over-leaked-gun-owners-list/)> (as of August 9, 2022) [“The DOJ is
27 supposed to keep Californians safe. This dump of information does the opposite,”
28 Patterson said. ‘The Attorney General and Department of Justice should not
investigate themselves,’ Patterson said. ‘I don’t trust them’”]; *see also* Gregory
Yee, “*Leak of California concealed-carry permit data is larger than initially
reported*”, LA Times, (June 29, 2022, 6:42 PM), <[https://www.latimes.com/
california/story/2022-06-29/california-concealed-carry-weapons-permit-data-
exposed-in-leak](https://www.latimes.com/california/story/2022-06-29/california-concealed-carry-weapons-permit-data-exposed-in-leak)> (as of August 9, 2022).

1 pass a new law, proposed Senate Bill 918, which would have greatly (and
2 unconstitutionally) increased the burdens applicants faced in getting CCW permits.
3 When Senate Bill 918 failed to pass, Alameda half-heartedly began to process
4 applications with all sorts of unconstitutional conditions and procedures that *Bruen*
5 forbids. These include (but are not limited to):

- 6 A. Submission to a psychological exam.
- 7 B. Allowing only one gun to be listed on the permit, when the standard in
8 most of the rest of California is a minimum of three.
- 9 C. Demanding photographs of home firearm storage.
- 10 D. Asking why an applicant needs a permit even though *Bruen* forbids “good
11 cause” determinations.
- 12 E. Requiring an applicant to inform them of the total number of firearms
13 they own, as well as their serial numbers. At least one applicant has
14 informed us that original purchase documents were also requested, which
15 most people don’t keep.
- 16 F. Asking for information about the people who live in the applicant’s home,
17 and any children that may visit the applicant’s home, as well as
18 information about the layout of the home.

19 11. Especially in light of the recent statewide leak of CCW permit holders
20 personal information, the Alameda County Sheriff’s Department has no business
21 demanding irrelevant personal information and further invading applicants’ privacy
22 into matters having nothing to do with a CCW permit applicant’s qualifications to
23 carry a CCW permit.

24 12. Alameda’s abuses do not stop at privacy violations or ridiculous
25 requests of applicants, however. The Sheriff’s Department is also unnecessarily
26 making the acquisition of permits take a very long time, with the current wait being
27 well over six months for new applicants. Such an excessive wait time violates both
28 *Bruen* and California law.

1 13. Even if Plaintiffs wanted to avoid all this nonsense and delay from
2 Alameda by simply obtaining a carry permit from out of state from a state that
3 respects the right to carry, as one Plaintiff has, California law does not allow its
4 residents to obtain permits from other counties with reasonable licensing schemes.
5 Nor does California honor CCW permits from neighboring states. Thus the
6 limitations Alameda County imposes on CCW permits effectively disarms the
7 county's residents in public.

8 14. The individual Plaintiff is a law-abiding, adult resident of Alameda
9 County who has applied for a CCW permit with the Alameda County Sheriff's
10 Department. The associational Plaintiffs are non-profit civil rights organizations
11 representing their members who reside in Alameda County, who have either
12 already applied for a CCW permit or intend to do so soon. Plaintiffs thus bring this
13 action to vindicate their own Second Amendment rights to publicly bear arms for
14 self-defense, or the rights of their members to do so.

15 15. Defendants are duty-bound to administer California state law for the
16 issuance of CCWs in a way that complies with the Second Amendment.

17 16. Plaintiffs seek injunctive and declaratory relief confirming that the
18 psychological exam required under California Penal section 26190(f)(1), violates
19 the Second Amendment.

20 17. Plaintiffs also seek injunctive and declaratory relief to remedy
21 violations of California state law, including but not limited to: (A) California Penal
22 Code section 26205, which states that that permit decisions must be made within 90
23 days of the initial application, or 30 days after receipt of the applicant's background
24 check from the Department of Justice, whichever is later; (B) the Alameda Sheriff's
25 requirement that the entire \$195 permit application fee be paid up front, in violation
26 of California Penal Code section 26190(b)(2), which only permits 20 percent of the
27 local fee to be charged upon the filing of the initial application; (C) the Alameda
28 Sheriff's pattern and practice of asking for information in excess of the standard

1 California Department of Justice (“DOJ”) application form, in violation of
2 California Penal Code section 26175(g); and (D) the pattern and practice of only
3 allowing one firearm on a CCW permit, in violations of California Penal Code
4 section 26215(a)(1).

5 **The Individual Plaintiff and his CCW Application Experience**

6 18. PLAINTIFF1 is a natural person and citizen of the United States.

7 19. PLAINTIFF1 is eligible to possess firearms under state and federal
8 law and currently owns firearms, and he has applied for a CCW permit with the
9 Alameda County Sheriff because Alameda is his county of residence. He wants to
10 be able to carry a firearm for self-defense throughout the state when he travels,
11 especially in the context of the rising crime plaguing California.⁶ He does not want
12 to allow his rights to continue to be violated through Alameda’s abusive and
13 intentionally dilatory application process.

14 20. Because PLAINTIFF1 fears being the victim of a violent crime given
15 the growing crime problem in Oakland, he became a gun owner a few years ago
16 and has taken several firearms training courses. He is also a member of Plaintiff
17 California Rifle & Pistol Association, and has been approved for and promptly
18 received out-of-state permits from Utah and Arizona, each of which required a
19 background check.

20 21. PLAINTIFF1 applied for his CCW permit with the Alameda County
21 Sheriff’s Department soon after the *Bruen* ruling. It has now been well beyond the
22 90-day time period mandated by California law, and he still has not received a
23 decision on his application. He did finally have an interview in September. Prior to
24

25 ⁶ See Will Shuck, *Amid pandemic, California murder rate shows shocking rise*,
26 Capitol Weekly, (December 8, 2021), <<https://capitolweekly.net/amid-pandemic-california-murder-rate-shows-shocking-rise/>> (as of August 17, 2022) “Preliminary
27 numbers from California’s biggest cities suggest that 2020’s stunning 30-percent
28 increase in the statewide murder rate – the largest since 1960 – has continued to rise this year.” *Id.*

1 the interview, Alameda Sheriff's Department personnel asked PLAINITFF1 to
2 provide photographs of his firearm storage devices. PLAINITFF1 did so, though he
3 thought that it was a strange request.

4 22. At the interview, which was recorded, the interviewing deputy asked
5 how PLAINITFF1's firearms were stored at his residence. They asked how the
6 firearm storage devices were accessed (key, combination, biometric) and if anyone
7 had access to the storage devices. PLAINITFF1 answered their questions, even
8 though such questions have no bearing on whether he is qualified to get a CCW
9 permit.

10 23. PLAINITFF1 was also asked where he intended to carry. Again, he
11 answered, but so long as he did not intend to carry in the relatively few places
12 where carry is forbidden even with a CCW permit (and he has no such intention),
13 such an inquiry was also irrelevant, and manifests an intent by the defendant to use
14 forbidden and subjective criteria in issuing or not issuing PLAINITFF1 a CCW
15 permit.

16 24. From there, the questions got even more absurd and irrelevant. The
17 deputy asked PLAINITFF1: (1) how many rifles he owns even though he will
18 obviously not be carrying a rifle concealed; (2) the type of residence he lives in and
19 who he lives with; (3) whether he had a home security system or security cameras
20 at his residence and if there was a fence around the property; and (4) why he
21 wanted a permit, albeit with the caveat that good cause was no longer a
22 requirement.

23 25. At the conclusion of the interview, the deputy told PLAINITFF1 that
24 "everything looked good", but that "the Sheriff will have the final say".
25 PLAINITFF1 is currently awaiting instructions on how to proceed with the
26 psychological exam, which will cost him another \$150 on top of the \$195 he has
27 already paid for the application fee. He'll also have to pay for a training course and
28 has no idea how much more that will cost.

1 California. Founded in 1875, the CRPA seeks to defend the civil rights of all law-
2 abiding individuals, including the fundamental right to bear firearms for lawful
3 purposes, including the core purpose of self-defense.

4 30. CRPA regularly participates as a party or amicus in litigation
5 challenging unlawful restrictions on the right to keep and bear arms. It also
6 provides guidance to California gun owners regarding their legal rights and
7 responsibilities. CRPA members include law enforcement officers, prosecutors,
8 professionals, firearm experts, and the general public.

9 31. CRPA members who seek a permit in Alameda County are harmed by
10 the Sheriff's abusive permit process and its non-compliance with the *Bruen* ruling.
11 Besides the individual Plaintiff, several other applicants have contacted CRPA to
12 complain about CCW permit process in Alameda County. They did not join this
13 lawsuit because they fear both retaliation from the Sheriff's Department on their
14 still-pending applications, and social ostracism if they are outed as being pro-gun in
15 Alameda.

16 32. Government practices that members of the associational plaintiffs have
17 complained about include:

- 18 a. Demanding photographs of how guns are stored in the home.
- 19 b. Asking why the applicant wants a permit despite the *Bruen* ruling
20 forbidding such an inquiry.
- 21 c. Only allowing one gun on the permit.
- 22 d. Asking for a list of what firearms an applicant owns (even if they do
23 not intend to carry them), their serial numbers, and purchase
24 documents (which most people do not maintain).
- 25 e. Asking for a list of people the applicant lives with, their home security
26 measures, and a layout of their house.
- 27 f. Asking where applicants intend to carry.
- 28 g. Charging the full application fee prior to issuance, in violation of

1 California law.

- 2 h. The total process cost being very high, despite *Bruen* warning that
3 excessive expense in application process is unconstitutional.
- 4 i. The intrusive requirement of a psychological evaluation.
- 5 j. The process taking anywhere from a year to two years before a permit
6 is finally issued.

7 33. All of the associational Plaintiffs also join this lawsuit due to their
8 associational standing. While Alameda is taking a very long time to process permit
9 applications at over a year or more, the litigation process usually takes even longer,
10 especially if appeals occur, as is likely here. Without associational standing, this is
11 the type of issue that will naturally evade review. Further, Plaintiffs anticipate
12 Alameda's Sheriff may cynically expedite the individual Plaintiff's application in
13 an attempt to dismiss this lawsuit on procedural grounds. As such, associational
14 standing on behalf their members is critical to addressing these legal issues in the
15 merits.

16 **Defendants**

17 34. Defendant Yesenia Sanchez is the elected Sheriff-Coroner of Alameda
18 County. Defendant Sanchez is, and at all times relevant to this complaint the state
19 actor with authority under California Penal Code section 26150 to issue carry
20 permits within the county. She is directly responsible for promulgating, enforcing,
21 and continuing the policies of her Department for CCW issuance. Sanchez is sued
22 solely in her official capacity.

23 35. Defendant Robert Bonta is the Attorney General of California. He is
24 the chief law enforcement officer of California. Defendant Bonta is charged by
25 Article V, Section 13 of the California Constitution with the duty to see that the
26 laws of California are uniformly and adequately enforced. Defendant Bonta also
27 has direct supervision over every district attorney and sheriff in all matters
28 pertaining to the duties of their respective officers. Defendant Bonta's duties also

1 include informing the public, local prosecutors, and law enforcement regarding the
2 meaning of the laws of California, including enforcing the law as to CCW permit
3 issuance. He is sued in his official capacity.

4 36. The true names or capacities—whether individual, corporate,
5 associate, or otherwise—of the Defendants named herein as Does 1 through 10, are
6 presently unknown to Plaintiffs, and are therefore sued by these fictitious names.
7 Plaintiffs pray for leave to amend this Complaint to show the true names or
8 capacities of these Defendants if and when they have been determined.

9 **JURISDICTION AND VENUE**

10 37. The Court has original jurisdiction of this civil action under 28 U.S.C.
11 § 1331, because the action arises under the Constitution and laws of the United
12 States, thus raising federal questions.

13 38. The Court also has jurisdiction under 28 U.S.C. § 1343(a)(3) and 42
14 U.S.C. §1983 since this action seeks to redress the deprivation, under color of the
15 laws, statutes, ordinances, regulations, customs and usages of the State of
16 California and political subdivisions thereof, of rights, privileges or immunities
17 secured by the United States Constitution and by Acts of Congress.

18 39. Plaintiffs' claims for declaratory and injunctive relief are authorized by
19 28 U.S.C. §§ 2201-2202, and their claim for attorneys' fees is authorized by 42
20 U.S.C. § 1988.

21 40. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2)
22 because a substantial part of the events or omissions giving rise to the claims
23 occurred in this district. The associational Plaintiffs have several members who
24 reside in Alameda County, and the individual Plaintiff resides within the County as
25 well.

1 defense outside the home.” *Id.* at 2122. And like *McDonald*, *Bruen* confirmed that
2 this right is fundamental. *Bruen*, at 2151.

3 47. As it pertains to CCW permit issuance regimes, *Bruen* states that shall
4 issue regimes that limit carry permits to “law-abiding, responsible citizens” are
5 acceptable, so long as they avoid “suitability determinations” and limit their
6 application criteria to “narrow, objective, and definite standards”. *Id.* at 2138 n.9
7 (citing *Shuttlesworth v. Birmingham*, 394 U.S. 147, 151 (1969)). They may not
8 require the “appraisal of facts, the exercise of judgment, and the formation of an
9 opinion.” *Bruen* at 2138 n.9 (citing *Cantwell v. Connecticut*, 310 U.S. 296, 305
10 (1940)).

11 48. Even in allowing for shall issue regimes however, the Court was
12 careful to add that “because any permitting scheme can be put toward abusive ends,
13 we do not rule out constitutional challenges to shall-issue regimes where, for
14 example, lengthy wait times in processing license applications or exorbitant fees
15 deny ordinary citizens their right to public carry.” *Bruen* at 2138 n.9.

16 **California’s CCW Law and Defendant’s Violations**

17 49. California state law has the following requirements of an applicant for
18 obtaining a CCW permit, which is administered by county sheriffs and chiefs of
19 police:

20 (a) When a person applies for a license to carry a pistol, revolver, or

21 (1) The applicant is of good moral character.

22 (2) Good cause exists for issuance of the license.

23 (3) The applicant is a resident of the county or a city within the county,
24 or the applicant’s principal place of employment or business is in the
25 county or a city within the county and the applicant spends a
26 substantial period of time in that place of employment or business.

27 (4) The applicant has completed a course of training as described in
28 [Penal Code] Section 26165.

1 See CAL. PENAL CODE § 26150(a) (Deering 2022); and see *id.*, § 26155(a) (Deering
2 2022) (listing the same requirements for when a city’s Police Department conducts
3 permit issuance).

4 50. Following *Bruen*, the “good cause” provision can no longer be
5 enforced. Like California, the New York law found unconstitutional in *Bruen*
6 prohibited ordinary law-abiding citizens from carrying a handgun outside the home
7 without a license, and it denied licenses to any applicant who failed to convince the
8 state that he or she had “proper cause” to carry a firearm for self defense.

9 51. The California Penal Code also lays out several other requirements
10 that Alameda County Sheriff Sanchez is currently violating.

11 52. Under Penal Code section 26205, a licensing authority “shall give
12 written notice to the applicant indicating if the license under this article is approved
13 or denied. The licensing authority shall give this notice within 90 days of the initial
14 application for a new license or a license renewal, or 30 days after receipt of the
15 applicant's criminal background check from the Department of Justice, whichever is
16 later.” There are no exceptions provided. The delay in processing CCW
17 applications is a violations of state law by Alameda Sheriff Sanchez, which results
18 in the violation of the Second Amendment.

19 53. Under Penal Code section 26190(b)(2), only 20 percent of the
20 “additional local fee” (i.e., what the issuing authority charges beyond the DOJ fee)
21 may be charged at the time the application is submitted. The balance may only be
22 collected when a permit is actually issued. Furthermore, the additional local fee
23 (i.e., the fee charged by the issuing county or city for application expenses other
24 than the state background check or the psychological examination) cannot exceed
25 the actual reasonable costs incurred by the locality in processing the application. By
26 requiring payment of the entire CCW application fee prior to approval, Alameda
27 Sherriff Sanchez is in violation of state law, which results in the denial of a
28 fundamental right.

1 54. While the *Bruen* standard forbids subjective criteria, California law
2 also does as well, at least to the extent the standard DOJ CCW permit application
3 does not ask for such information. According to Penal Code section 26175(g), “An
4 applicant shall not be required to complete any additional application or form for a
5 license, or to provide any information other than that necessary to complete the
6 standard application form described in subdivision (a), except to clarify or interpret
7 information provided by the applicant on the standard application form.” By
8 insisting on the collection of irrelevant and extraneous information, Alameda
9 Sheriff Sanchez is in violation of state law. Furthermore, to the extent that CCW
10 permits are denied for refusal to provide this information, Sheriff Sanchez is
11 violating the Second Amendment.

12 55. Finally, state law explicitly contemplates that individuals may want to
13 carry more than one firearm (not necessarily at the same time as different firearms
14 may fit different wardrobes better, depending on the occasion or the weather). Penal
15 Code section 26215(a)(1) lays out a process to amend existing permits to add
16 additional firearms that may be carried. The Sheriff’s insistence that only one
17 firearm may be designated on CCW permits violates state law.

18 **California Law Violates the Second Amendment.**

19 56. The California Penal Code allows for psychological testing part of the
20 CCW process. Such testing clearly violates *Bruen* as a forbidden “suitability”
21 determination. Individuals must still pass background checks both to get a carry
22 permit, and to have bought a gun in the first place.

23 57. Even if this Court determines *Bruen* does allow for psychological
24 testing, Alameda County or the State should have to bear the cost of that expense.

25 58. Therefore, Plaintiffs challenge the constitutionality of California Penal
26 Code section 26190(f), which allows issuing authorities to mandate psychological
27 testing.
28

1 **FIRST CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF**
2 **U.S. CONST. AMEND. II, XIV**
3 **RIGHT TO BEAR ARMS**
4 **42 U.S.C. § 1983**
5 **AGAINST DEFENDANTS SHERIFF-CORONER YESENIA SANCHEZ, AND**
6 **DOES 1-5**

7 64. Plaintiffs hereby re-allege and incorporate by reference the allegations
8 in the foregoing paragraphs as if set forth fully herein.

9 65. As described previously, Alameda Sheriff Sanchez violated the rights
10 of CCW permit applicants by charging exorbitant fees, by taking over a year to
11 process applications, by requiring non-statutory information and engaging in
12 forbidden suitability determinations, and by arbitrarily limiting applicants to one
13 pistol on their permit.

14 66. As a result, Plaintiff’s Second Amendment rights, as well as the rights
15 of the members of the Associational Plaintiffs, are violated.

16 67. Defendants are thus propagating customs, policies, and practices that
17 deprive or delay California residents, including Plaintiffs, of their constitutional
18 right to bear arms for self-defense “in case of confrontation,” as guaranteed by the
19 Second and Fourteenth Amendments.

20 68. Plaintiffs are thus entitled to declaratory and injunctive relief against
21 such unconstitutional customs, policies, and practices.

22 **SECOND CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF**
23 **U.S. CONST. AMEND. II, XIV**
24 **RIGHT TO BEAR ARMS**
25 **42 U.S.C. § 1983**

26 **AGAINST ATTORNEY GENERAL ROB BONTA, AND DOES 6-10**

27 69. Plaintiffs hereby re-allege and incorporate by reference the allegations
28 in the foregoing paragraphs as if set forth fully herein.

 70. The Supreme Court has explained that “shall issue” regimes are
 permissible, but determinations based on “perceived lack of need or suitability” are
 not. *Bruen*, 142 S. Ct. at 2123.

 71. As described previously, California violates the right of CCW permit

1 applicants by allowing issuing authorities to demand psychological exams at their
2 discretion under California Penal Code section 26190(f).

3 72. As a result, Plaintiff's Second Amendment rights, as well as the rights
4 of the members of the Associational Plaintiffs, are violated.

5 73. The Attorney General is thus enforcing laws that violate the
6 constitutional right to bear arms for self-defense "in case of confrontation", as
7 guaranteed by the Second and Fourteenth Amendments.

8 74. Plaintiffs are thus entitled to declaratory and injunctive relief against
9 such unconstitutional customs, policies, and practices.

10 **THIRD CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF**
11 **VIOLATIONS OF THE CALIFORNIA PENAL CODE and DENIAL OF**
12 **PROCEDURAL DUE PROCESS UNDER AMENDMENT XIV.**
13 **AGAINST DEFENDANTS SHERIFF-CORONER YESENIA SANCHEZ, AND**
14 **DOES 1-5**

15 75. Plaintiffs hereby re-allege and incorporate by reference the allegations
16 in the foregoing paragraphs as if set forth fully herein.

17 76. Alameda County Sheriff's CCW permit process violates several
18 portions of the California Penal Code.

19 77. These violations of state law results in a denial of procedural due
20 process under the Fourteenth Amendment, further resulting in a violation of a
21 fundamental right.

22 78. By asking for information from applicants beyond what is in the
23 approved DOJ form, Alameda violates California Penal Code section 26175(g),
24 Defendant Sanchez is in violation of state law.

25 79. By taking over a year to process permits, Alameda Sheriff Sanchez
26 violates California Penal Code section 26205.

27 80. By collecting the entirety of its fees at the time the application is
28 submitted, Alameda Sheriff Sanchez violates California Penal Code section
26190(b)(2).

81. By limiting CCW permit applicants to a single pistol, Alameda Sheriff

1 Sanchez violates California Penal Code section 26215(a)(1).

2 82. Plaintiffs are thus entitled to declaratory and injunctive relief against
3 Alameda Sheriff Sanchez's illegal customs, policies, and practices that result in a
4 denial of procedural due process under the Fourteenth Amendment, which further
5 result in a denial of a fundamental right.

6 **PRAYER**

7 WHEREFORE, Plaintiffs request that judgment be entered in their favor and
8 against Defendants as follows:

9 1. A declaration that California Penal Code section 26190(f) is
10 unconstitutional as a forbidden suitability determination;

11 2. A declaration that taking over a year to process permits violates the
12 constitutional right to carry;

13 3. A declaration that charging in excess of \$345 for CCW permits
14 violates the constitutional right to carry;

15 4. A declaration that requiring information beyond what is necessary to
16 determine applicants are law-abiding citizens is unconstitutional;

17 5. A declaration that limiting applicants and permit holders to a single
18 pistol violates the constitutional right to carry;

19 6. A declaration that Alameda's actions as described herein violate
20 California Penal Code sections 26175(g), 26205, 26190(b)(2), and 26215(a)(1), and
21 thus violate due process of law;

22 7. An order preliminarily and permanently enjoining all Defendants and
23 all other officers, agents, servants, employees, and persons under the authority of
24 the State, from enforcing California Penal Code section 26190(f);

25 8. An order permanently enjoining Alameda County Sheriff Sanchez in
26 her official capacity from delaying issuance of a CCW Permit beyond 90 days after
27 receipt of such applicant's initial application for a new license or a license renewal,
28

1 or 30 days after receipt of the applicant’s criminal background check from the
2 Department of Justice, whichever is later;

3 9. An order permanently enjoining Alameda County Sheriff Sanchez in
4 her official capacity from requiring more information beyond “narrow, objective,
5 and definite” standards *Bruen* allows for, and that Defendants Sanchez must also
6 comply with California Penal Code section 26175(g);

7 10. An order permanently enjoining Alameda County Sheriff Sanchez in
8 her official capacity from charging applicants more than the actual reasonable costs
9 incurred by Alameda County in processing CCW Permit applications;

10 11. An order permanently enjoining Alameda County Sheriff Sanchez in
11 her official capacity from charging more than 20 percent of the CCW permit
12 application expenses up front;

13 12. An order permanently enjoining Alameda County Sheriff Sanchez in
14 her official capacity from restricting CCW permit holders to only one pistol on their
15 CCW permit;

16 13. An order that Alameda County Sheriff Sanchez in her official capacity
17 must immediately and without further delay issue a CCW Permit to the Individual
18 Plaintiff identified herein;

19 14. Costs of suit, including attorney’s fees and costs pursuant to 42 U.S.C.
20 § 1988; and

21 15. All other relief the court deems appropriate.

22 Respectfully Submitted,

23 Dated: January 3, 2023

MICHEL & ASSOCIATES, P.C.

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25 _____
26 C.D. Michel
27 Counsel for Plaintiffs
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Dated: January 3, 2023

LAW OFFICES OF DON KILMER

Don Kilmer
Counsel for Plaintiff Second Amendment
Foundation

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