

1 George M. Lee (SBN 172982)  
gml@seilerepstein.com

2 **SEILER EPSTEIN LLP**  
275 Battery Street, Suite 1600  
3 San Francisco, CA 94111  
Phone: (415) 979-0500  
4 Fax: (415) 979-0511

5 Attorneys for Plaintiffs  
6 CHAD LINTON, PAUL MCKINLEY STEWART,  
7 KENDALL JONES, FIREARMS POLICY FOUNDATION,  
8 FIREARMS POLICY COALITION,  
9 SECOND AMENDMENT FOUNDATION,  
10 THE CALGUNS FOUNDATION and MADISON  
11 SOCIETY FOUNDATION

12 **UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA**

14 CHAD LINTON, et al.,

15 Plaintiffs,

16 vs.

17 XAVIER BECERRA, in his official capacity as  
Attorney General of California, et al.,

18 Defendants.

Case No. 3:18-cv-07653-JD

**PLAINTIFFS’ NOTICE OF MOTION AND  
MOTION FOR SUMMARY JUDGMENT, OR IN  
THE ALTERNATIVE, FOR PARTIAL  
SUMMARY JUDGMENT**

**[FRCP 56]**

Courtroom 11, 19<sup>th</sup> Floor  
Judge: Hon. James Donato

19 TO ALL PARTIES, THROUGH THEIR ATTORNEYS OF RECORD:

20 PLEASE TAKE NOTICE that pursuant to Fed. R. Civ. Pro. 56, plaintiffs Chad Linton,  
21 Paul McKinley Stewart, Kendall Jones, Firearms Policy Foundation, Firearms Policy Coalition,  
22 Inc., Second Amendment Foundation, California Gun Rights Foundation and Madison Society  
23 Foundation (“Plaintiffs”), will and hereby do move this Court for the issuance of an order  
24 granting summary judgment in Plaintiffs’ favor, and against Defendants Xavier Becerra, in his  
25 official capacity as Attorney General of California, Brent E. Orick, in his official capacity as  
26 Acting Chief of the Department of Justice Bureau of Firearms, and Robert D. Wilson, in his  
27  
28

**SEILER EPSTEIN LLP**  
Attorneys at Law

SEILER EPSTEIN LLP  
Attorneys at Law

1 official capacity as Deputy Attorney General (“Defendants”).

2 This motion is made on the grounds that the Defendants’ policies, practices, and customs  
3 are being used to deny the right of Plaintiffs Linton, Stewart and Jones, to own/possess and  
4 purchase firearms, notwithstanding other state court judgments and proceedings that have  
5 specifically set aside, vacated or otherwise dismissed their prior felony convictions, and restored  
6 their firearm rights to them; that these policies violate the Second Amendment, the Full Faith and  
7 Credit Clause, art. IV § 1, and the Privileges and Immunities Clause, art. IV § 2, and Amend.  
8 XIV, § 1 of the U.S. Constitution.

9 In the alternative, if for any reason summary judgment cannot be had, Plaintiffs will and  
10 hereby do move for partial summary judgment/summary adjudication pursuant to FRCP 56(a),  
11 on each the following claims, individually:

12 **Count I:** That Plaintiffs are entitled to judgment on their first claim for relief that  
13 Defendants’ policies, practices and customs violate the Second Amendment;

14 **Count II:** That Plaintiffs are entitled to judgment on their second claim for relief that  
15 Defendants’ policies, practices and customs violate the Full Faith and Credit Clause, art. IV § 1  
16 of the U.S. Constitution; and/or

17 **Count III:** That Plaintiffs are entitled to judgment on their third claim for relief that  
18 Defendants’ policies, practices and customs violate the Privileges and Immunities Clause, art. IV  
19 § 2, and Amend. XIV, § 1 of the U.S. Constitution.

20 Any hearing on the motion will be set by the Court, if necessary.

21 In support of this motion, Plaintiffs and moving parties rely upon this notice of motion  
22 and motion, the memorandum of points and authorities, the supporting declarations of the  
23 plaintiffs and counsel, and all exhibits attached thereto, their request for judicial notice, all court  
24 records and other matters of which the Court may take judicial notice, and all other evidence and  
25 argument that the Court may consider upon the hearing of this matter.

26 //

27 //

28

1 Dated: June 22, 2020

**SEILER EPSTEIN LLP**

2  
3 /s/ George M. Lee

4 George M. Lee

5 Attorneys for Plaintiffs

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
**SEILER EPSTEIN LLP**  
Attorneys at Law

1 George M. Lee (SBN 172982)  
gml@seilerepstein.com

2 **SEILER EPSTEIN LLP**  
275 Battery Street, Suite 1600  
3 San Francisco, CA 94111  
Phone: (415) 979-0500  
4 Fax: (415) 979-0511

5 Attorneys for Plaintiffs  
6 CHAD LINTON, PAUL MCKINLEY STEWART,  
7 KENDALL JONES, FIREARMS POLICY FOUNDATION,  
8 FIREARMS POLICY COALITION,  
9 SECOND AMENDMENT FOUNDATION,  
10 THE CALGUNS FOUNDATION and MADISON  
11 SOCIETY FOUNDATION

12 **UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA**

14 CHAD LINTON, et al.,

15 Plaintiffs,

16 vs.

17 XAVIER BECERRA, in his official capacity as  
18 Attorney General of California, et al.,

19 Defendants.

Case No. 3:18-cv-07653-JD

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF PLAINTIFFS’  
MOTION FOR SUMMARY JUDGMENT, OR IN  
THE ALTERNATIVE, FOR PARTIAL  
SUMMARY JUDGMENT**

**[FRCP 56]**

Courtroom 11, 19<sup>th</sup> Floor  
Judge: Hon. James Donato

**SEILER EPSTEIN LLP**  
Attorneys at Law

TABLE OF CONTENTS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I. INTRODUCTION ..... 1

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY ..... 1

    A. PLAINTIFF CHAD LINTON..... 1

    B. PLAINTIFF PAUL MCKINLEY STEWART ..... 4

    C. PLAINTIFF KENDALL JONES ..... 5

    D. PROCEDURAL HISTORY..... 7

    E. DEFENDANTS’ POSITION ..... 7

III. ARGUMENT..... 9

    A. STANDARD..... 9

    B. PLAINTIFFS ARE ENTITLED TO JUDGMENT ON THEIR CLAIM ALLEGING VIOLATION OF THE SECOND AMENDMENT..... 9

        1. Defendants’ Policy Amounts to an Improper Categorical Prohibition. .... 9

        2. Under the Two-Part Test Stated in *Chovan*, Plaintiffs Are Entitled to Judgment Under Either Strict or Intermediate Scrutiny. .... 10

            a. Plaintiffs Are Not Felons Under the Laws of The State Where the Convictions Occurred. .... 13

            b. No Public Safety Interest Exists for Barring Persons Formerly Convicted of Non-Violent Felonies..... 17

    C. PLAINTIFFS ARE ENTITLED TO JUDGMENT ON THEIR CLAIM ALLEGING VIOLATION OF THE FULL FAITH AND CREDIT CLAUSE. .... 19

    D. PLAINTIFFS ARE ENTITLED TO JUDGMENT ON THEIR CLAIM ALLEGING VIOLATION OF THE PRIVILEGES AND IMMUNITIES CLAUSE (ART. IV, § 2) AND THE PRIVILEGES OR IMMUNITIES CLAUSE (AMEND. XIV)..... 21

        1. Defendants’ Policies Violate Plaintiff Linton’s Right to Travel to California Under Art. IV § 2 of the Constitution..... 22

        2. Defendants’ Policies Violate All Individual Plaintiffs’ Right to Travel to California Under the Fourteenth Amendment. .... 23

**SEILER EPSTEIN LLP**  
Attorneys at Law

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IV. CONCLUSION .....25

TABLE OF AUTHORITIES

**Cases**

*Attorney General of N.Y. v. Soto-Lopez*, 476 U.S. 898, 106 S.Ct. 2317 (1986).....24

*Baker v. Gen. Motors Corp.*, 522 U.S. 222, 118 S.Ct. 657 (1998).....20

*Bauer v. Becerra*, 858 F.3d 1216 (9th Cir. 2017).....5, 11

*Beecham v. United States*, 511 U.S. 368, 114 S.Ct. 1669 (1994).....17

*Binderup v. Attorney General*, 836 F.3d 336 (3d Cir. 2016),  
*cert. denied* 137 S.Ct. 2323 (2017).....10, 18, 19

*Caron v. United States*, 524 U.S. 308, 118 S.Ct. 2007 (1998).....17

*Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 130 S.Ct. 876 (2010).....12

*District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783 (2008) ..... *passim*

*Duncan v. Becerra*, 265 F.Supp.3d 1106 (S.D. Cal. 2017),  
*aff'd*, 742 F.App'x 218 (9th Cir. 2018) .....11

*Dunn v. Blumstein*, 405 U.S. 330, 92 S.Ct. 995 (1972).....24

*Edenfield v. Fane*, 507 U.S. 761 (1993) .....18

*Estin v. Estin*, 334 U.S. 541 (1948) .....20

*Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011) .....18

*Fisher v. Kealoha*, 855 F.3d 1067 (9th Cir. 2017) .....11

*Greater New Orleans Broad. Ass'n, Inc. v. United States*, 527 U.S. 173 (1999).....18

*Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011) (*Heller II*) .....17

*Italian Colors Rest. v. Becerra*, 878 F.3d 1165 (9th Cir. 2018) .....18

*Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 102 S.Ct. 1883 (1982).....20

*Matsushita Elec. Industrial Co. v. Epstein*, 516 U.S. 367, 116 S.Ct. 873 (1996) .....20

*McDonald v. City of Chicago*, 561 U.S. 742, 130 S.Ct. 3020 (2010) .....9, 18

*Memorial Hosp. v. Maricopa County*, 415 U.S. 250, 94 S.Ct. 1076 (1974) .....24

*Milliken v. Meyer*, 311 U.S. 457, 61 S.Ct. 339 (1940) .....20

*Milwaukee County v. M.E. White Co.*, 296 U.S. 268, 56 S.Ct. 229 (1935).....20

SEILER EPSTEIN LLP  
Attorneys at Law

1 *Pacific Employers Ins. Co. v. Industrial Accident Comm'n*,  
2 306 U.S. 493, 59 S.Ct. 629 (1939) .....20

3 *Padilla-Romero v. Holder*, 611 F.3d 1011 (9th Cir. 2010) ..... 13

4 *People v. Gilbreth*, 156 Cal.App.4th 53 (2007).....21, 25

5 *People v. Williams*, 49 Cal.App.4th 1632 (1996) .....21

6 *Rhode v. Becerra*, --- F.Supp.3d ---, 2020 WL 2392655 (S.D. Cal. Apr. 23, 2020) ..... 17

7 *Roberts v. City of Fairbanks*, 947 F.3d 1191 (9th Cir. 2020)..... 14

8 *Rogers v. Grewal*, No. 18-824, 2020 WL 3146706 (U.S. June 15, 2020)  
9 (Thomas, J., dissenting from denial of certiorari) ..... 10

10 *Saenz v. Roe*, 526 U.S. 499, 119 S.Ct 1518 (1999) .....22, 23, 24

11 *Sannmann v. Department of Justice*, 47 Cal.App.5th 676 (2020) .....21

12 *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322 (1969) ..... 24

13 *Silvester v. Harris*, 843 F.3d 816 (9th Cir. 2016) ..... 11

14 *Toomer v. Witsell*, 334 U.S. 385, 68 S.Ct. 1156 (1948) ..... 22

15 *Turner Broadcasting System, Inc. v. F.C.C.*, 520 U.S. 180, 117 S.Ct. 1174 (1997) .....17

16 *United States v. Alvarez*, 617 F.3d 1198 (9th Cir. 2010)..... 12

17 *United States v. Chovan*, 735 F.3d 1127 (9th Cir. 2013)..... *passim*

18 *United States v. Engstrum*, 609 F.Supp.2d 1227 (D. Utah 2009)..... 12

19 *United States v. Fitzgerald*, 935 F.3d 814 (9th Cir. 2019) .....21

20 *United States v. Fowler*, 198 F.3d 808 (11th Cir. 1999) ..... 17

21 *United States v. JP Morgan Chase Bank Account No. Ending 8215*,  
22 835 F.3d 1159 (9th Cir. 2016) .....9

23 *United States v. Marzzarella*, 614 F.3d 85 (3d Cir. 2010)..... 18

24 *United States v. Phillips*, 827 F.3d 1171 (9th Cir. 2016)..... 10

25 *V.L. v. E.L.*, -- U.S. --, 136 S.Ct. 1017 (2016) .....20

26 *Wells, Waters & Gases, Inc. v. Air Prods. & Chems., Inc.*, 19 F.3d 157 (4th Cir. 1994) ..... 13

27 *Williams v. North Carolina*, 317 U.S. 287 (1942).....20

28



1 *Zands v. Nelson*, 797 F.Supp. 805 (S.D. Cal. 1992).....9

2 *Zetwick v. County of Yolo*, 850 F.3d 436 (9th Cir. 2017) .....9

3

4 **Statutes**

5 18 U.S.C. § 921(a) .....11, 17, 19

6 18 U.S.C. § 922(g)..... *passim*

7

8 28 U.S.C. § 1738.....21

9 Cal. Pen. Code § 17(b).....21, 23, 24

10 Cal. Pen. Code § 29800 ..... *passim*

11 Cal. Pen. Code § 30105 .....2

12 Cal. Pen. Code § 31635 .....6

13 Cal. Pen. Code § 460 .....25

14 Cal. Pen. Code § 461 .....25

15 Cal. Pen. Code § 484g .....25

16 Cal. Pen. Code § 489 .....25

17 Cal. Penal Code § 26710 .....6

18 Cal. Penal Code § 30305 ..... *passim*

19 Cal. Veh. Code § 2800.2.....24

20 Rev. Code of Wash. 9.41.040 .....2

21

22

23 **Other Authorities**

24 Black’s Law Dictionary (10th ed. 2014) .....14

25 Bryan A. Garner, *Garner’s Modern American Usage* (3d ed. 2009) .....13

26 Joseph Greenlee, *The Historical Justification for Prohibiting Dangerous Persons From*

27 *Possessing Arms*, 20 WYO. L. REV. 249 (2020) .....10

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Rules**

Fed. R. Civ. Pro. 30(b)(6) .....8

**Constitutional Provisions**

U.S. Const., Amend. II ..... *passim*  
U.S. Const., Amend. XIV .....22, 23  
U.S. Const., art. IV, § 1 .....19, 21  
U.S. Const., art. IV, § 2 .....22, 23

**SEILER EPSTEIN LLP**  
Attorneys at Law

**I. INTRODUCTION**

This action seeks to vindicate and restore the fundamental right to keep and bear arms, a right which the State is denying individual plaintiffs Linton, Stewart and Jones. The State, acting through the defendants' continuing policies, practices and customs, deprives plaintiffs and others similarly situated on the grounds that once one is a convicted felon, he is always a convicted felon. However, those purportedly disqualifying felony convictions emanating from other states have been set aside, vacated or were otherwise dismissed, and plaintiffs' rights have been expressly restored to them there. Accordingly, there is no legal or equitable bar to the continuing deprivation of the plaintiffs' rights under the Second Amendment here. Individual plaintiffs Linton, Stewart and Jones are entitled to declaratory and injunctive relief from the enforcement of Cal. Pen. Code §§ 29800 (prohibiting possession of firearms by a felon) and/or 30305 (ammunition) against them. Summary judgment, or in the alternative, partial summary judgment as to each claim, should be entered in favor of all plaintiffs herein. For purposes of this motion, the organizational plaintiffs Firearms Policy Foundation, Firearms Policy Coalition, Inc., Second Amendment Foundation, Inc., California Gun Rights Foundation, and Madison Society Foundation, are moving on behalf of plaintiffs Linton, Stewart and Jones, each of whom are members. The relief that all plaintiffs seek in this motion is for judgment that would provide relief to individual plaintiffs Linton, Stewart and Jones.

**II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

**A. PLAINTIFF CHAD LINTON**

In 1987, while plaintiff Chad Linton was serving in the U.S. Navy, and stationed at NAS Whidbey Island, Washington, he tried – albeit briefly – to outrun a Washington State Police officer and make it back to base. He reconsidered the idea, and was arrested without resistance. (Linton Decl., ¶ 7). Mr. Linton was charged and pled guilty to attempted evasion, a Class C felony under the Revised Code of Washington, and driving while intoxicated, a misdemeanor. (Id., ¶ 8). He spent seven days in jail. (Id.) In 1988, he successfully completed his probation, and received a certificate of discharge, and reasonably believed, based upon statements made by the

1 Washington State court judge that the matter had been dismissed from his records. (Id., ¶ 9).

2 After leaving the service, Mr. Linton moved back to California, where he raised a family  
3 and remained a law-abiding citizen. In 2015, he attempted to make a firearm purchase but was  
4 surprised to learn that California DOJ denied the purchase, due to the Washington State  
5 conviction. (Linton Decl., ¶ 13). Mr. Linton hired a Washington attorney who re-opened the  
6 criminal proceedings, withdrew the guilty plea, and entered a retroactive not-guilty plea. (Id.)  
7 The court then issued its “Order on Motion Re: Vacating Record of Felony Conviction,” in  
8 which it specifically found that the crime for which Mr. Linton was convicted was not a violent  
9 offense. (Id., ¶ 14; Linton Exh. A, p. 2). The court granted the motion to vacate the conviction,  
10 set aside the guilty plea, and released plaintiff from all penalties and disabilities resulting from  
11 the offense. On April 18, 2016, the Island County Superior Court also issued a separate Order  
12 Restoring Right to Possess Firearms pursuant to Revised Code of Washington 9.41.040(4).  
13 (Linton Decl., ¶ 15; Linton Exh. B).

14 Mr. Linton underwent a Personal Firearms Eligibility Check (“PFEC”), pursuant to Cal.  
15 Pen. Code § 30105(a), to confirm his eligibility to purchase and/or possess a firearm, which  
16 indicated he was eligible. (Linton Decl., ¶ 16; Linton Exh. C). In 2018, Mr. Linton attempted to  
17 purchase a rifle, but was again denied. (Linton Decl., ¶ 17; Linton Exh. D). He then underwent a  
18 “Live Scan” fingerprint-based background check request with the DOJ directly, which again  
19 showed the presence of no felony convictions. (Linton Decl., ¶ 18).

20 Mr. Linton’s attorney began discussions with the California DOJ to correct his status as a  
21 “prohibited person” here. His counsel provided the DOJ with the Washington court orders  
22 vacating the felony conviction and restoring his firearm rights. (Linton Decl., ¶ 19; Richards  
23 Decl., ¶ 4). In response, the DOJ informed Mr. Linton that “the [felony] entry in question cannot  
24 be found on your California criminal history record, therefore, no further investigation is  
25 required[,]” and that his fingerprints “did not identify any criminal history maintained by the  
26 Bureau of Criminal Information and Analysis.” (Linton Decl., ¶ 20; Linton Exs. F and G). Based  
27 upon these letters, Mr. Linton attempted to purchase a revolver in March 2018, but was again  
28 denied. (Linton Decl., ¶ 21). Then, on April 3, 2018, agents from the DOJ’s Armed Prohibited

1 Persons System (APPS) enforcement program came to Mr. Linton’s home, and seized several  
2 firearms that he had acquired and owned throughout the years, including an antique, family-  
3 heirloom shotgun that was once owned by his grandfather. (Id., ¶ 22). All of these firearms were  
4 acquired through legal purchases or transfers, through federally-licensed firearm dealers (FFLs),  
5 and pursuant to DOJ background checks. Mr. Linton’s wife showed the DOJ agents the  
6 Washington State court orders that vacated the felony conviction, and restored Mr. Linton’s gun  
7 rights. These agents sought guidance from defendant Wilson, who purportedly advised that the  
8 Washington court orders would have no effect here, and ordered seizure of the firearms. (Id.)

9 Mr. Linton’s attorney, Adam Richards, spoke with Mr. Wilson, who informed him that he  
10 had personally reviewed the records in question, and stated “the Department’s position” was that  
11 they would not honor the out-of-state orders which vacated or dismissed Mr. Linton’s case.  
12 (Richards Decl., ¶ 5). Mr. Wilson stated that this was routinely how the Department handled  
13 such out-of-state felony convictions that had been set aside or vacated. (Id.)

14 Earlier this year, Mr. Linton moved with his family to Nevada. (Linton Decl., ¶ 3.) A  
15 substantial factor that motivated their move was that California still considers him to be a  
16 “felon,” prohibited from owning or purchasing firearms. (Id.) That he cannot exercise an  
17 important and fundamental constitutional right was an important reason why they moved. (Id.)  
18 Nevertheless, he continues to maintain a residential interest in California, including a recurring  
19 annual lease on property located in Placer County. (Id., ¶ 4.) He built a cabin on that property,  
20 but as it is so remote, and abundant with wildlife, feels unprotected in that area without at least  
21 the option of having appropriate firearms available or at hand if needed. (Id.) Otherwise, he  
22 continues to have family here, and would like to be able to possess or handle firearms or  
23 ammunition for recreational purposes, such as target shooting, while he is visiting. (Id., ¶ 5). He  
24 intends to return eventually, but feels he cannot do so until this matter is resolved. (Id., ¶ 6).

25 In this case, Department of Justice representative Gilbert Matsumoto testified, among  
26 other subjects discussed below, as to the basis for Mr. Linton’s denial of his attempts to purchase  
27 a firearm, and his prohibited status. (Matsumoto Depo. (Lee Decl. Exh. A) at 71:8-17). The sole  
28 basis for his denial was the 1987 felony conviction from Washington State. (Matsumoto Depo. at

1 74:21 - 75:13). However, the FBI records which the Department accessed when it made the  
 2 determination to deny Mr. Linton a firearm shows “zero felonies.” (Matsumoto Depo. at 79:16 -  
 3 80:5; Lee Decl. Exh. E at p. 015). The disposition of the prior felony conviction shows up as  
 4 “vacated,” which meant that there were “zero felonies” as far as the State of Washington was  
 5 concerned. (Matsumoto Depo. at 80:8-25; Lee Decl. Exh. E, p.015). However, a handwritten  
 6 notation by the DOJ analyst duly followed California’s policy (discussed below) in noting “Not  
 7 recognized [in] CA!” (Matsumoto Depo. at 81:2-15; Lee Decl. Exh. E, p. 015).

8 **B. PLAINTIFF PAUL MCKINLEY STEWART**

9 In 1976, when plaintiff Stewart was 18 years old, and living in Arizona, he succumbed to  
 10 a crime of opportunity, and stole some lineman’s tools from a telephone company truck.  
 11 (Stewart Decl., ¶ 3). When the police came to his residence to investigate, Mr. Stewart gave up  
 12 the tools and offered no resistance to his arrest. (Id.) Mr. Stewart was found guilty of first degree  
 13 burglary, a felony, in the County of Yuma, Arizona. He was sentenced to three years of  
 14 probation, and the Court imposed a suspended sentence. (Id., ¶ 4). He successfully completed his  
 15 probation in 1978, and believed that the felony conviction had been dismissed. (Id., ¶ 4-5).

16 Since moving to California in 1988, Mr. Stewart has been a law-abiding citizen, and has  
 17 remained steadily and gainfully employed. (Stewart Decl., ¶ 6). In 2015, he attempted to  
 18 purchase a pistol for self defense in the home, which was denied due to the presence of a felony  
 19 conviction. (Id., ¶ 7). A Live Scan fingerprint background check showed a lingering conviction,  
 20 but did not reflect whether it was a felony. It also stated that it was “undetermined” whether he  
 21 was eligible to purchase firearms. (Id., ¶ 8).

22 Mr. Stewart filed an application to restore his firearm rights and to set aside his judgment  
 23 of guilt with the Superior Court of Yuma County, Arizona, which issued an order restoring his  
 24 firearm rights, and specifically set aside the judgment of guilt. (Stewart Decl., ¶ 10; Stewart Exh.  
 25 A). Believing the matter would be automatically updated in any background search, Mr. Stewart  
 26 attempted to make another firearm purchase on February 10, 2018, which the DOJ also denied.  
 27 (Stewart Decl., ¶ 12). Mr. Stewart had several telephone conversations with DOJ officials, who  
 28 informed him that the Arizona felony conviction disqualified him from possessing or purchasing

1 firearms, notwithstanding the Arizona court's order. (Id., ¶ 14).

2 Department of Justice representative Matsumoto testified as to the basis for Mr. Stewart's  
3 firearm denial. (Matsumoto Depo. at 89:25 - 90:6; Lee Decl. Exh. D, ¶¶ 7-8). Mr. Stewart's  
4 DROS<sup>1</sup> denial, which occurred in 2018, was based solely upon his 1976 burglary conviction  
5 from Arizona. (Matsumoto Depo. 91:6-24). Mr. Stewart's criminal history record indicates the  
6 1976 burglary conviction, but a set-aside order was granted on August 11, 2016. (Matsumoto  
7 Depo. 92:11-19; Lee Decl. Exh. F). But again, a DOJ analyst had noted that the set-aside order<sup>2</sup>  
8 was not recognized in California. (Matsumoto Depo. at 93:6-11; Lee Decl. Exh. F). Mr.  
9 Stewart's restoration of rights had no effect in California because, in the Department's view,  
10 only a governor's pardon would be recognized. (Matsumoto Depo. at 94:25 - 95:11).

11 **C. PLAINTIFF KENDALL JONES**

12 Plaintiff Kendall Jones has lived in the County of Sacramento, for over 39 years. (Jones  
13 Decl., ¶ 1). He was employed by the California Department of Corrections as a Correctional  
14 Officer for 30 years until his final retirement in 2014, and served as a firearms and use-of-force  
15 instructor for the DOC. Mr. Jones also worked as the Primary Armory Officer for the California  
16 State Prison Solano facility for over 19 years. (Id., ¶ 3). He is POST-certified and NRA-certified  
17 in the subjects of firearms, laws, self-defense, firearms safety and responsibility, and in his career  
18 received numerous letters of commendation and appreciation, both pertaining to his primary  
19 duties as a Correctional Officer, and also as a firearms and use-of-force instructor. (Id., ¶ 3-4).  
20 Since retirement, he has pursued the natural course of his career as a law enforcement firearms  
21 trainer, and in this capacity, he has personally trained thousands of peace officers and private  
22 citizens in the proper use of handguns, rifles, shotguns, less-lethal defensive weapons (e.g.,  
23 pepper spray) and use of force. (Id., ¶ 5).

24 When he was 19 years old – over three decades ago – Mr. Jones was arrested in Houston,  
25 \_\_\_\_\_

26 <sup>1</sup> DROS stands for "Dealer Record of Sale," the system through which all firearm sales and  
27 transfers are regulated. *Bauer v. Becerra*, 858 F.3d 1216, 1218-1219 (9th Cir. 2017). The DROS  
28 system is administered by the Department of Justice, and these functions are not delegable to a  
local law enforcement agency. (Matsumoto Depo. at 30:16 - 31:2).

<sup>2</sup> The Arizona Terminology Page uses the term "13-907," a code which means the set-aside of a  
conviction. (Lee Decl. Exh. J at p. 216; Matsumoto Depo. at 94:7-24).

1 Texas, from an incident involving the alleged misuse of a credit card. Mr. Jones maintains that  
2 he had used a credit card under mistaken pretenses. (Jones Decl., ¶ 8). Nevertheless, after being  
3 charged with credit card fraud in 1980, the prosecutor made an offer to have the court set aside  
4 and dismiss the matter, following a period of probation, if Mr. Jones agreed to plead guilty to a  
5 single charge of “credit card abuse,” a third degree felony under Texas law, which involved no  
6 term of confinement. (Id., ¶ 9). In light of the prosecutor’s offer by which the charges would be  
7 set aside and dismissed, Mr. Jones accepted the deal, pled guilty to the charge offered, and  
8 completed a three-year term of probation. (Id). After successfully completing probation, on or  
9 about August 22, 1983, per the agreement, the district court for the County of Harris, Texas,  
10 permitted him to withdraw his plea of guilty, and set aside and dismissed the judgment of  
11 conviction. (Id., ¶ 10; Jones Exh. A).

12 Mr. Jones then moved to California and pursued a career in law enforcement with the  
13 State of California. (Jones Decl., ¶ 11). For thirty years, he legally and necessarily owned and  
14 possessed firearms, as a part of his profession, for personal protection, recreation and other  
15 lawful purposes. (Id., ¶ 12). Since retiring in 2014, Mr. Jones has had a career as a law  
16 enforcement firearms and use-of-force trainer, drawing upon 30 years of training and experience  
17 in the field. To continue in this field and chosen profession, of course, he is required to own,  
18 possess, handle and use firearms and ammunition. (Id.)

19 He previously held a Certificate of Eligibility (“COE”) to possess firearms and  
20 ammunition under Cal. Penal Code § 26710, a necessary requirement to becoming or  
21 maintaining status as a certified firearm instructor under current DOJ policy. (Jones Decl., ¶ 13).  
22 In fact, even at present, Mr. Jones is listed on the Department of Justice’s website as one of its  
23 Certified Instructors eligible to provide training specified by Pen. Code § 31635(b). (Jones Decl.,  
24 ¶ 12; Jones Exh. B). But in 2018, after he submitted his renewal application for his COE, which  
25 he had held since 2010, the DOJ informed him that his application was being delayed. (Jones  
26 Decl., ¶ 14.) After Mr. Jones initiated a record review request, the Department informed him on  
27 February 23, 2019 that he was “not eligible to own, possess or have under [his] custody or  
28 control any firearm[.]” and denied him the renewed COE. (Id.; Jones Exh. C).



1 Mr. Matsumoto testified that the sole basis for the denial of Mr. Jones’s COE was the  
 2 felony conviction from Texas. (Matsumoto Depo. at 100:14 – 101:1). The criminal history  
 3 records, however, showed that the disposition of that court case was that the matter was  
 4 “dismissed” and that under a heading called “provision,” the matter was “set aside.” (Id., at  
 5 101:18 – 102:14; Lee Decl. Exh G at p. 2). Mr. Matsumoto indicated, however, that California  
 6 would not honor a set aside order from Texas. (Matsumoto Depo. at 102:21 – 103:1).

7 **D. PROCEDURAL HISTORY**

8 Plaintiffs filed this action to challenge the firearms prohibition imposed by Pen. Code §§  
 9 29800 and 30305, as applied to Messrs. Linton and Stewart, on December 20, 2018.  
 10 Organizational plaintiffs Firearms Policy Foundation, Firearms Policy Coalition, Inc., Second  
 11 Amendment Foundation, Inc., California Gun Rights Foundation, and Madison Society  
 12 Foundation joined individual plaintiffs Linton and Stewart, to vindicate their members’ rights,  
 13 and on also behalf of all similarly-situated members of those organizations.

14 Defendants filed a motion to dismiss (ECF No. 12) on February 22, 2019. After a  
 15 hearing, on August 23, 2019 this Court terminated the motion to dismiss on the grounds that the  
 16 motion “raises issues best addressed in summary judgment proceedings,” and directed plaintiffs  
 17 to file this motion by June 22, 2020. (ECF No. 26).

18 On November 15, 2019, plaintiffs filed their motion for leave to file an amended  
 19 complaint, to add plaintiff Kendall Jones to these proceedings, asserting a similar claim. (ECF  
 20 No. 30). Plaintiffs filed their First Amended Complaint (ECF No. 36) on December 2, 2019.

21 On December 19, 2019, plaintiffs filed a motion for preliminary injunction, to enjoin  
 22 enforcement of Pen. Code §§ 29800 and 30305 against individual plaintiffs Jones, Linton and  
 23 Stewart pending disposition of this matter. On May 21, 2020, this Court denied plaintiffs’  
 24 motion. (ECF No. 46).

25 **E. DEFENDANTS’ POSITION**

26 The defense in this matter has been to deny that there is any official policy regarding the  
 27 treatment of out-of-state convictions that have been set aside, vacated, or dismissed. Instead,  
 28 defendants have insisted that they are simply applying the language of Penal Code § 29800(a) in

1 concluding that “[a]ny person who has been convicted of [...] a felony under the laws [...] of  
2 any other state” is prohibited from owning a firearm.

3 Gilbert Matsumoto was produced as the Department of Justice’s Rule 30(b)(6) deposition  
4 witness on certain categories, including the Department’s policy regarding the treatment of  
5 former felons whose convictions have been set aside or vacated in their respective states of  
6 origin. (Matsumoto Depo. at 16:1-9; 23:20-24:4; Lee Decl. Exh. D). Mr. Matsumoto denied that  
7 there is any written or unwritten policy on this topic (Matsumoto Depo. 24:5-24). Instead, as Mr.  
8 Matsumoto succinctly states the State’s position, it is simply a matter of following the state’s  
9 codes. (Id., at 24:5-11). Defendants’ position is that theirs is simply a straightforward reading of  
10 Pen. Code § 29800, i.e., if a person is convicted in another state of a felony, California would  
11 prohibit that person from acquiring a firearm irrespective of whether the felony conviction was  
12 set aside or vacated. (Matsumoto Depo. at 55:17 - 56:5).

13 However, defendants have also produced in this litigation a DOJ document entitled  
14 “Background Clearance Unit DROS Procedures,” marked in this litigation as Exhibit 005. (See  
15 Exh. 005 (Lee Decl., Exh. C); Matsumoto Depo. at 25:9-15). This is a document that DOJ  
16 analysts follow to determine and individual’s eligibility to own or possess firearms in California.  
17 (Matsumoto Depo. at 26:9-19). This document is part of a larger “training binder,” which was  
18 reviewed by staff, supervisors, and the DOJ’s attorneys for use by the Department’s Background  
19 Clearance Unit. (Id., at 27:2-16). Defendants deny that this document is either reflective of a  
20 policy statement, or a memorandum (See Defendants’ Response to Request for Admission No.  
21 10 (Lee Decl. Exh. B) at 5:10-13 (“Defendants deny that Exhibit 005 is a memorandum and deny  
22 that Exhibit 005 constitutes a ‘policy.’ Penal Code § 29800 serves as the guiding principle on  
23 treatment of out-of-state felony convictions and possession of firearms in California.”))

24 This document provides, in a section entitled “Other States,” that “the laws of that state  
25 where the conviction occurred apply.” (Lee Decl. Exh. C at p. 080). But that is not the actual  
26 policy or practice that the Department follows in honoring or respecting another state court’s  
27 final judgment. Instead, the Department’s analysis is simple: if one was convicted in another  
28 state of any felony, period, they will be prohibited from having a firearm here unless they have a

1 governor’s pardon from that state. (Matsumoto Depo. at 33:8 - 34:1).

2 Under the heading of “Pardons / Civil Liability Relief – Other States,” Exhibit 005  
3 otherwise and succinctly states the policy here as follows: “A person convicted of a felony in  
4 another state whose civil disabilities were removed under the laws of that state (similar to PC  
5 section 12023.4) is prohibited from possessing handguns in California (AG Opinion No. 67-100.  
6 DAG Winkler, 7/26/1967).” (Lee Decl. Exh. C, at p. 082).

### 8 III. ARGUMENT

#### 9 A. STANDARD

10 “Summary judgment is appropriate when, viewing the evidence in the light most  
11 favorable to the nonmoving party, there is no genuine dispute as to any material fact.” *Zetwick v.*  
12 *County of Yolo*, 850 F.3d 436, 440 (9th Cir. 2017) (citing *United States v. JP Morgan Chase*  
13 *Bank Account No. Ending 8215*, 835 F.3d 1159, 1162 (9th Cir. 2016)). Where the plaintiff is the  
14 moving party seeking summary judgment, he or she must adduce admissible evidence on all  
15 matters as to which he or she bears the burden of proof. *Zands v. Nelson*, 797 F.Supp. 805, 808  
16 (S.D. Cal. 1992).

#### 17 B. PLAINTIFFS ARE ENTITLED TO JUDGMENT ON THEIR CLAIM ALLEGING VIOLATION OF 18 THE SECOND AMENDMENT.

##### 19 1. Defendants’ Policy Amounts to an Improper Categorical Prohibition.

20 In *District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783 (2008), the Supreme  
21 Court affirmed an individual right to possess a firearm “unconnected with militia service.” 554  
22 U.S. at 582. At the core of the Second Amendment is the right of “law-abiding, responsible  
23 citizens to use arms in defense of hearth and home.” *Id.* at 634-35. And in *McDonald v. City of*  
24 *Chicago*, 561 U.S. 742, 130 S.Ct. 3020 (2010), the Court held that Second Amendment right as  
25 recognized in *Heller* was a right fundamental to our system of ordered liberty. 561 U.S. at 778,  
26 791. At the same time, the Court explained that its recognition of an individual right to bear  
27 firearms would not “cast doubt on longstanding prohibitions on the possession of firearms by  
28 felons[,]” among other restrictions. *Heller*, 554 U.S. at 626; *McDonald*, 561 U.S. at 786. The

1 total prohibition defendants are enforcing against plaintiffs here is not “longstanding” in relative  
 2 terms, and even if it were, plaintiffs are not of a class of persons the Founders understood to be  
 3 prohibited from possessing arms—i.e., violent and otherwise dangerous persons. *Binderup v.*  
 4 *Attorney General*, 836 F.3d 336, 348 (3d Cir. 2016), *cert. denied* 137 S.Ct. 2323 (2017). Nor is  
 5 there any history or tradition of such a prohibition.

6 But if one was at some time a felon, does that mean he is always a convicted felon, for  
 7 purposes of the right to own firearms? As a matter of our Nation’s history, prohibited persons  
 8 could have their rights restored once they were no longer considered dangerous. As noted in  
 9 *United States v. Phillips*, 827 F.3d 1171 (9th Cir. 2016), “there are good reasons to be skeptical  
 10 of the constitutional correctness of categorical, lifetime bans on firearm possession by *all*  
 11 felons.” 827 F.3d at 1174 (emphasis original). In *Phillips*, although the Ninth Circuit affirmed  
 12 the defendant’s conviction under 18 U.S.C. § 922(g)(1), it noted the scholarly disagreement over  
 13 whether the practice of lifetime bans on firearm ownership by felons was historically justified,  
 14 and under what theory. See, Joseph Greenlee, *The Historical Justification for Prohibiting*  
 15 *Dangerous Persons From Possessing Arms*, 20 WYO. L. REV. 249 (2020) (manuscript currently  
 16 available online at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3509040](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3509040)).

17 Here, defendants’ enforced prohibition here has no longstanding historical predicate and  
 18 broadly restricts the constitutionally protected rights of plaintiffs for all purposes relating to  
 19 firearms. Like the ban struck down in *Heller*, it threatens citizens with substantial criminal  
 20 penalties. *Heller*, 554 U.S. at 634. The law thus fails *Heller*’s categorical analysis.

21 **2. Under the Two-Part Test Stated in *Chovan*, Plaintiffs Are Entitled to**  
 22 **Judgment Under Either Strict or Intermediate Scrutiny.**

23 Assuming *arguendo* that an interest-balancing test is appropriate, even under the two-step  
 24 approach articulated within this Circuit in *United States v. Chovan*, 735 F.3d 1127, 1136 (9th  
 25 Cir. 2013), plaintiffs are entitled to judgment in their favor. Under this two-step approach,<sup>3</sup> the

26 \_\_\_\_\_  
 27 <sup>3</sup> The validity of this two-step approach adopted by a majority of the Circuits is questionable. As  
 28 Justice Thomas recently remarked, directly speaking of *Chovan* and similar tests, “the courts of  
 appeals’ test appears to be entirely made up. The Second Amendment provides no hierarchy of  
 ‘core’ and peripheral rights.” *Rogers v. Grewal*, No. 18-824, 2020 WL 3146706, at \*3 (U.S. June  
 15, 2020) (Thomas, J., dissenting from denial of certiorari).

1 court must first ask “whether the challenged law burdens conduct protected by the Second  
 2 Amendment,” and, if so, then determines the “appropriate level of scrutiny.” In *Chovan*, the  
 3 court considered challenge to 18 U.S.C. § 922(g)(9), which imposes a lifetime firearms ban on  
 4 domestic violence misdemeanants. At the first step, the Ninth Circuit found that section  
 5 922(g)(9)’s lifetime prohibition *did* burden rights protected by the Second Amendment. 735 F.3d  
 6 at 1137. Therefore, it cannot reasonably be disputed that defendants’ policies here similarly  
 7 burden conduct protected by the Second Amendment, and that we must go beyond the first step.

8 At the second step, a court is to measure “how severe the statute burdens the Second  
 9 Amendment right. ‘Because *Heller* did not specify a particular level of scrutiny for all Second  
 10 Amendment challenges, courts determine the appropriate level by considering ‘(1) how close the  
 11 challenged law comes to the core of the Second Amendment right, and (2) the severity of the  
 12 law’s burden on that right.’” *Duncan v. Becerra*, 265 F.Supp.3d 1106, 1119 (S.D. Cal. 2017),  
 13 *aff’d*, 742 F.App’x 218 (9th Cir. 2018) (quoting *Bauer v. Becerra*, 858 F.3d at 1222). “Guided by  
 14 this understanding, [the] test for the appropriate level of scrutiny amounts to ‘a sliding scale.’  
 15 [...] ‘A law that imposes such a severe restriction on the fundamental right of self defense of the  
 16 home that it amounts to a destruction of the Second Amendment right is unconstitutional under  
 17 any level of scrutiny.’ [...] Further down the scale, a ‘law that implicates the core of the Second  
 18 Amendment right and severely burdens that right warrants strict scrutiny. Otherwise,  
 19 intermediate scrutiny is appropriate.’” *Bauer*, 858 F.3d at 1222 (citing *Silvester v. Harris*, 843  
 20 F.3d 816, 821 (9th Cir. 2016), and *Chovan*, 735 F.3d at 1138).

21 In this case, if tiered scrutiny is to be used at all, strict scrutiny should apply to the  
 22 defendants’ policies at issue, i.e., those which prohibit former felons convicted in other states for  
 23 non-violent crimes notwithstanding the set-aside/dismissal of those convictions. In *Chovan*, the  
 24 court noted that section 922(g)(9) contained exemptions for convictions that have been set  
 25 expunged, pardoned or set aside, or for those who have had their civil rights restored in section  
 26 921(a)(33)(B)(ii), and thus, held that while section 922(g)(9) substantially burdened Second  
 27 Amendment rights, the burden was “lightened” by those exceptions, and applied intermediate  
 28 scrutiny. *Chovan*, 735 F.3d at 1138; *Fisher v. Kealoha*, 855 F.3d 1067, 1071 n.2 (9th Cir. 2017).

1 In the present case, however, the very fact that the State refuses to recognize these set-aside  
 2 exceptions that might otherwise “lighten” the burden makes the burden more severe, and thus,  
 3 strict scrutiny is warranted.

4 The net effect of defendants’ policy is to deprive plaintiffs Linton, Stewart and Jones of  
 5 their ability to exercise a fundamental constitutional right to purchase/possess a firearm for  
 6 lawful purposes, including for self-defense in the home. (Linton Decl., ¶¶ 4, 25; Stewart Decl., ¶  
 7 15; Jones Decl., ¶¶ 17-18). Beyond that, it has subjected them to substantial hardships arising  
 8 from the loss of the right. In Mr. Linton’s case, California Department of Justice Agents came to  
 9 his home and seized firearms that he had legally purchased, including an antique family heirloom  
 10 that had once belonged to his grandfather. (Linton Decl., ¶ 22). And for Mr. Jones, a retired  
 11 correctional officer, he routinely dealt with and was threatened on occasion by some of the  
 12 state’s most violent convicted criminals. (Jones Decl., ¶ 17). Thus, there is no question that the  
 13 defense policies place a substantial burden on “core” Second Amendment conduct, i.e., the right  
 14 to keep and bear arms in the home for self-defense. *Heller*, 554 U.S. at 635. Accordingly, the  
 15 defendants’ policies should be evaluated under strict scrutiny, that is, to require defendants to  
 16 show that their policies are narrowly tailored to achieve a compelling state interest, and that no  
 17 less restrictive alternative exists to achieve the same ends. *United States v. Alvarez*, 617 F.3d  
 18 1198, 1216 (9th Cir. 2010) (citing *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 340,  
 19 130 S.Ct. 876, 898 (2010)). *See also*, *United States v. Engstrum*, 609 F.Supp.2d 1227, 1231 (D.  
 20 Utah 2009) (applying strict scrutiny to § 922(g)(9)).

21 Even under intermediate scrutiny, however, defendants’ policy and/or treatment of out-  
 22 of-state felony convictions fails to pass constitutional muster. Under intermediate scrutiny, the  
 23 government’s stated objective justifying the law or regulation must be “significant, substantial,  
 24 or important” and it must show a “reasonable fit between the challenged regulation and the  
 25 asserted objective.” *Chovan*, 735 F.3d at 1139. Assuming that the prohibition on the possession  
 26 of firearms by *actual* felons is an “important government interest” in furtherance of reducing  
 27 gun-related violence, it has no application here and is therefore not a “reasonable fit” for two  
 28 reasons discussed below: First, the restrictions do not apply to them because they are not actually



1 considered to be felons by the states in which their convictions originated, as a categorical  
 2 matter. Second, any public safety interest in reducing potential gun violence does not apply to  
 3 *non-violent* felonies when the courts of those states have deemed them not to exist.

4 **a. Plaintiffs Are Not Felons Under the Laws of The State Where the**  
 5 **Convictions Occurred.**

6 Defendants' primary defense, that they are simply applying a literal reading of Pen. Code  
 7 § 29800(a), is not dispositive of the matter, for the individual plaintiffs here, Linton, Stewart and  
 8 Jones, are not *necessarily* considered felons under the statute itself. Pen. Code § 29800(a)<sup>4</sup> states:  
 9 "[a]ny person who has been convicted of [...] a felony under the laws [...] of any other state" is  
 10 prohibited from owning a firearm. The statute's use of the *present* perfect tense ("has been  
 11 convicted") is ambiguous, in that it can either be read to refer to an event in the past, or a  
 12 condition continuing through the present. See, *Padilla-Romero v. Holder*, 611 F.3d 1011, 1013  
 13 (9th Cir. 2010) (noting ambiguity of present perfect tense, citing *Wells, Waters & Gases, Inc. v.*  
 14 *Air Prods. & Chems., Inc.*, 19 F.3d 157, 163 (4th Cir. 1994), and Bryan A. Garner, *Garner's*  
 15 *Modern American Usage*, 802–03 (3d ed. 2009)).

16 Putting aside grammatical construction, however, if we take the Department's position at  
 17 face value, that the Department considers "[t]he laws of that particular state where the conviction  
 18 occurred apply" (Lee Decl. Exh. C, at p. 080), that cannot be a one-way street as DOJ  
 19 representative Matsumoto suggests. (See, Matsumoto Depo. at 33:8 – 34:1; 69:20 – 70:1). Mr.  
 20 Matsumoto explained that in following this rule that "the laws of the particular state where the  
 21 conviction occurred apply," a DOJ analyst is required to look at the laws of that particular state  
 22 (as a part of their "due diligence"), in examining the meaning of certain words and phrases, such  
 23 as whether the conviction was "set aside." (Matsumoto Depo. at 36:16 - 37:10). But this is  
 24 simply lip-service, for we learned that even if the other states' definitions consider a vacated or  
 25 set-aside conviction to have nullified it in the first instance, the State simply reverts to its

26 \_\_\_\_\_  
 27 <sup>4</sup> Pen. Code § 30305, pertaining to possession of ammunition, states: "No person prohibited from  
 28 owning or possessing a firearm under Chapter 2 (commencing with Section 29800) [...] shall  
 own, possess, or have under custody or control, any ammunition[.]" Therefore, as applied here,  
 any prohibition of the plaintiffs' possession of ammunition is dependent upon their status as  
 prohibited persons under section 29800(a).

1 fallback position which is that section 29800 simply prohibits *all* persons conviction of felonies,  
2 irrespective of whether it was deemed nullified. (Matsumoto Depo. at 70:12-23).

3 In Plaintiff Linton’s case, the final order on his case was on a “motion to vacate” the  
4 felony conviction, which was granted. (Linton Exh. A, pp. 1-2). And his criminal records, upon  
5 which the DOJ relied, specifically indicated that the final disposition of the conviction was that it  
6 had been “vacated.” (Matsumoto Depo. 80:8-15). Mr. Matsumoto said that DOJ procedure would  
7 be to consult the Washington Terminology page of the “FBI binder,” a binder the FBI prepared  
8 and updates in administering the National Instant Criminal Background Checks System  
9 (“NICS”) program, and to look up the definition of “vacate” as used in Washington (Matsumoto  
10 Depo. at 83:5-25; 84:17-24; Lee Decl. Exh. L at p. 255), to determine that the term “vacate”  
11 means the felony conviction still exists for firearm purposes. (Matsumoto Depo. at 85:5-12). This  
12 was the described process, notwithstanding that as far as the State of Washington was concerned,  
13 there were “zero felonies” on Mr. Linton’s record. (Id. at 80:3-25). And moreover, this  
14 conclusion flies in the face of the common understanding of what a “vacated” conviction is, as  
15 the Ninth Circuit recently affirmed. *See, Roberts v. City of Fairbanks*, 947 F.3d 1191, 1198 (9th  
16 Cir. 2020) (“Because all convictions here were vacated and underlying indictments ordered  
17 dismissed, there remains no outstanding criminal judgment nor any charges pending against  
18 Plaintiffs. [...] According to Black’s Law Dictionary, the definition of ‘vacate’ is ‘to nullify or  
19 cancel; make void; invalidate[.]’” (citing Black’s Law Dictionary 1782 (10th ed. 2014)). But  
20 really, this doesn’t matter, for as shown below with respect to the treatment of Messrs. Stewart  
21 and Jones’s convictions, the “terminology” used by another state’s criminal justice system is  
22 only followed when it actually *confirms* the existence of a felony conviction, but not the other  
23 way around.

24 For example, in Plaintiff Stewart’s case, the Arizona court granted his application to set  
25 aside the judgment of guilt, and included a “dismissal of the Information/Indictment” in restoring  
26 his rights to him. (Stewart Decl., ¶ 10; Stewart Exh. A). His criminal history record also shows,  
27 however, that the 1976 burglary conviction had been set aside on August 11, 2016. (Matsumoto  
28 Depo. at 92:11-19; Lee Decl. Exh. F). Mr. Matsumoto again described the process in which he



1 consulted “the FBI Binder” to look at the specific terminology that state uses in determining the  
 2 disposition of the offense. (Matsumoto Depo. at 94:2-14). And his conclusion, ratifying the  
 3 decision of the DOJ analyst, was that a set aside order was not recognized in California. (Id. at  
 4 93:6-11). Mr. Stewart’s restoration of rights had no effect in California because, in the  
 5 Department’s view, only a governor’s pardon would be a recognized restoration of his firearm  
 6 rights. (Id., at 94:25 - 95:11). But the “Arizona Terminology Page” provides that if the 13-907  
 7 (set aside) order occurred after July 3, 2015, and was not for a “serious offense,” (which does not  
 8 include third degree burglary) then it “[r]emoves both federal and AZ state prohibitions for this  
 9 offense,” speaking *nothing* of whether the felony continues to exist. (Lee Decl., Exh. J at p. 217).  
 10 And further, the Arizona Terminology Page further provides that the term “dismissed” (as used  
 11 in the order) means “[t]his is not a conviction.” (Id., at p. 215).

12 And most pointedly, in Plaintiff Jones’s case, the Texas court’s order after his successful  
 13 period of probation stated: “It is therefore the order of the court that the defendant be and is  
 14 hereby permitted to withdraw his plea of guilty, the indictment against the defendant be and at  
 15 the same is hereby dismissed and the Judgment of Conviction be hereby set aside as provided by  
 16 law.” (Jones Decl., ¶ 10; Jones Exh. A). Mr. Matsumoto agreed that the criminal records they  
 17 consulted indicated that the final disposition of Mr. Jones’s case was that it was “dismissed” with  
 18 a further descriptor that the conviction had been “set aside.” (Matsumoto Depo. at 101:18 –  
 19 102:14; Lee Decl., Exhs. G at p. 2, and Exh. I at p. 162). And again, Mr. Matsumoto testified that  
 20 they would look at the NICS terminology for the State of Texas to determine what “set aside”  
 21 means to determine his eligibility. (Matsumoto Depo. at 102:24 – 103:10). But in consulting the  
 22 “Texas Terminology Page” of that binder, both of the terms “dismissed” and “set aside” are  
 23 expressly stated to mean “This is not a conviction.” (Id., at 105:5-25; Lee Decl. Exh. K, at pp.  
 24 228, 231).<sup>5</sup> And therefore, none of this actually matters, because notwithstanding this somewhat  
 25 pointless exercise in attempting to determine whether a felony still exists under Texas law, it  
 26

27 <sup>5</sup> Indeed, the “Texas Terminology Page” states that “Set Aside” means where “[a] judge  
 28 discharges the defendant from community supervision and sets aside the verdict or permits the  
 defendant to withdraw his plea and dismisses the charge. [...] This is not a conviction.” (Lee  
 Decl., Exh. K at p. 231). This is precisely what happened in Mr. Jones’s case.

1 doesn't *really* matter to the Department, as they simply fall back to their position that Penal Code  
2 § 29800 prevents anyone convicted of a felony in another state to be prohibited. (Matsumoto  
3 Depo. at 105:2 – 107:3).

4 When asked the natural question that follows, which is why bother to consult the NICS  
5 binder at all if those state-specific terminologies ultimately do not matter to the Department of  
6 Justice, his answer was unsatisfactory. “We only use it for reference. It’s only reference  
7 material.” (Matsumoto Depo. at 107:4-12.)

8 In fact, the Department had already gone through the meaningless exercise of trying to  
9 determine whether Mr. Jones was prohibited *under Texas law* from owning a firearm by virtue of  
10 his conviction. The FBI analyst’s answer to the DOJ’s inquiry was, “The completion of  
11 probation in Texas followed up by a subject receiving a conviction set aside is not a ROR *but it*  
12 *does remove the conviction*. The DOA would no longer be prohibiting for firearms purposes.”  
13 (Lee Decl. Exh. H at p. 160, emphasis added). But the DOJ simply ignored this finding. All of  
14 this suggests that these purported efforts to determine whether a conviction exists under another  
15 state’s law are simply designed to confirm the Department’s preordained result. For if another  
16 state considers the conviction to exist, the Department can rely upon that fact to justify their  
17 result, but if the other state considers the conviction *not* to exist, then the Department merely  
18 falls back to the literal language of Pen. Code § 29800 to deny the right. This is simply a “heads-  
19 I-win, tails-you-lose” game, in which no matter what another state says, here in California, once  
20 you are a felon, you are always a felon.<sup>6</sup>

21 The better view, taking the State’s policy at its word, is that if “the laws of that particular  
22 state where the conviction occurred apply” (Lee Decl. Exh. C at p. 080), then it must not only  
23 consider the fact of conviction itself, but the fact of a vacated, set aside or dismissed conviction  
24 as well. This is supported by federal law interpreting the federal statute prohibiting the federal  
25

---

26  
27 <sup>6</sup>And, as discussed in the argument regarding the treatment of California felony convictions with  
28 respect to the Privileges and Immunities Clause, *infra* at pp. 21-25, this isn’t even true. For  
California “deems” a felony conviction not to exist, when it clearly did, when considering post-  
conviction felony wobblers reduced to misdemeanors to restore firearms rights to felons  
convicted here (Matsumoto Depo. at 69:7-17). But California is unwilling to do so when it

1 statute prohibiting possession of a firearm by convicted felons generally, 18 U.S.C. § 922(g)(1),  
2 which contains an important and relevant qualification:

3 What constitutes a conviction of such a crime shall be determined in accordance  
4 with the law of the jurisdiction in which the proceedings were held. *Any*  
5 *conviction which has been expunged, or set aside or for which a person has been*  
6 *pardoned or has had civil rights restored shall not be considered a conviction* for  
7 purposes of this chapter, unless such pardon, expungement, or restoration of civil  
8 rights expressly provides that the person may not ship, transport, possess, or  
9 receive firearms.

10 18 U.S.C. § 921, subdiv. (a)(20)(B) (emphasis added). The courts have held that the second  
11 sentence, “the exemption clause,” is to be determined according to the state where the conviction  
12 originated as well. *Beecham v. United States*, 511 U.S. 368, 114 S.Ct. 1669 (1994); *Caron v.*  
13 *United States*, 524 U.S. 308, 313, 118 S.Ct. 2007 (1998); *see also, United States v. Fowler*, 198  
14 F.3d 808, 809–10 (11th Cir. 1999).

15 **b. No Public Safety Interest Exists for Barring Persons Formerly**  
16 **Convicted of Non-Violent Felonies.**

17 Under intermediate scrutiny, where the state has asserted a generalized public safety  
18 concern about keeping firearms out of the hands of dangerous individuals, any generally-stated  
19 concern about reducing potential violence simply has no application here. Under intermediate  
20 scrutiny, a district court must determine whether the government has “base[d] its conclusions  
21 upon substantial evidence.” *Rhode v. Becerra*, --- F.Supp.3d ---, 2020 WL 2392655, at \*19 (S.D.  
22 Cal. Apr. 23, 2020) (citing *Turner Broadcasting System, Inc. v. F.C.C.*, 520 U.S. 180, 196, 117  
23 S.Ct. 1174 (1997)); *Heller v. District of Columbia*, 670 F.3d 1244, 1259 (D.C. Cir. 2011) (*Heller*  
24 *II*) (the government bears the burden of presenting “meaningful evidence, not mere assertions, to  
25 justify its predictive judgments.”). To carry this burden, the government must not only present  
26 evidence, but “substantial evidence” drawn from “reasonable inferences” that actually support its  
27 proffered justification. *Turner Broad. Sys., Inc.*, 520 U.S. 180, 195 (1997). And in the related  
28 First Amendment context, the government is typically put to the evidentiary test to show that the  
harms it recites are not only real, but “that [the speech] restriction will in fact alleviate them to a

comes to convictions deemed not to exist under the laws of other states. (*Id.*, at 70:18-23;  
110:20-23).

1 material degree.” *Italian Colors Rest. v. Becerra*, 878 F.3d 1165, 1177 (9th Cir. 2018) (citing  
 2 *Greater New Orleans Broad. Ass’n, Inc. v. United States*, 527 U.S. 173, 188 (1999) (quoting  
 3 *Edenfield v. Fane*, 507 U.S. 761, 770-71 (1993)). This same evidentiary burden should apply  
 4 with equal force to Second Amendment cases, where equally fundamental rights are similarly at  
 5 stake. *See, Ezell v. City of Chicago*, 651 F.3d 684, 706–07 (7th Cir. 2011) (“Both *Heller* and  
 6 *McDonald* suggest that First Amendment analogues are more appropriate, and on the strength of  
 7 that suggestion, we and other circuits have already begun to adapt First Amendment doctrine to  
 8 the Second Amendment context”) (citing *Heller*, 554 U.S. at 582, 595, 635; *McDonald*, 130  
 9 S.Ct. at 3045). *See also, United States v. Marzzarella*, 614 F.3d 85, 89 n.4 (3d Cir. 2010) (“[W]e  
 10 look to other constitutional areas for guidance in evaluating Second Amendment challenges. We  
 11 think the First Amendment is the natural choice.”).

12 In *Binderup v Attorney General*, the Third Circuit, sitting en banc, held that 18 U.S.C. §  
 13 922(g)(1) could not bar the plaintiffs from firearm possession as a result of their earlier  
 14 disqualifying state law misdemeanor convictions. 836 F.3d at 356-57. In a well-considered  
 15 opinion, the en banc court held that section 922(g)(1) violated the Second Amendment as applied  
 16 to those individual plaintiffs based on different triggering state law offenses. 836 F.3d at 340-41.  
 17 In that case, the plaintiffs’ rights to possess firearms was expressly restored to them by a state  
 18 court, but they continued to be barred under federal law, section 922(g)(1). *Id.* at 340. The Third  
 19 Circuit applied the two-part test under *Marzzarella*, a test now expressly adopted in this Circuit  
 20 by *Chovan*. The first step put the burden on the plaintiffs to show that a presumptively lawful  
 21 regulation burdened their Second Amendment rights. *Binderup* held that a challenger must clear  
 22 two hurdles: “[H]e must (1) identify the traditional justifications for excluding from Second  
 23 Amendment protections *the class of which he appears to be a member*, [...] and then (2) present  
 24 facts about himself and his background that distinguish his circumstances from those of persons  
 25 in the historically barred class[.]” *Binderup*, 836 F.3d at 347 (emphasis added). That burden lay  
 26 upon the plaintiffs and was described as a necessarily strong showing. *Id.*

27 The Third Circuit held that if the plaintiff was able to distinguish the seriousness of his  
 28 disqualifying federal conviction from “serious crimes” at this first step, the next step required the

1 government to show that the regulation as applied satisfied intermediate scrutiny. *Binderup*, 836  
 2 F.3d at 356. The court further instructed district courts within that circuit to require the  
 3 government to make the showing as to whether a person should be disarmed for life, which turns,  
 4 in part, on the likelihood that a challenger would commit crimes in the future. *Id.* at 354 n.7.

5 Here, plaintiffs Linton, Stewart and Jones have shown here that they are now responsible,  
 6 law-abiding, peaceable citizens with no history of violent behavior or conduct that would suggest  
 7 that they pose any elevated threat or danger to others. The Washington State Court found Mr.  
 8 Linton’s underlying offense not to be a violent offense under Washington State law. (Linton Exh.  
 9 A at p. 2). And likewise, by granting the set-aside order under Arizona law, the Arizona courts  
 10 did not consider Mr. Stewart’s offense to be a “Serious Offense” (Ariz. Terminology Page, Lee  
 11 Decl. Exh. J at p. 217), thereby allowing the removal of his firearms prohibition there. None of  
 12 the individual plaintiffs was sentenced to a term in prison, and all successfully completed the  
 13 terms of their probation. The crimes for which they were convicted are each more than thirty  
 14 years old, were for lesser-classified felonies, and did not involve the use of force or violence.  
 15 The sentences imposed upon the plaintiffs were minor, and more to the ultimate point, their  
 16 convictions were adjudged to have been vacated, dismissed and/or set aside under the laws of  
 17 those respective states. None of these individual plaintiffs is prohibited from owning firearms in  
 18 the states where the convictions originated, or under federal law. 18 U.S.C. § 921(a)(20)(B).

19 Under either a categorical approach reviewed under *Heller*, or applying a tiered (strict or  
 20 intermediate) scrutiny analysis under *Chovan*, plaintiffs Linton, Stewart and Jones have shown  
 21 they are entitled to judgment in their favor on the grounds that sections 29800 and 30305, as  
 22 applied to them, violate the Second Amendment.

23 **C. PLAINTIFFS ARE ENTITLED TO JUDGMENT ON THEIR CLAIM ALLEGING VIOLATION OF**  
 24 **THE FULL FAITH AND CREDIT CLAUSE.**

25 The core question presented here is whether California is required to honor the judgments  
 26 of courts in other states that have set aside or vacated the plaintiffs’ underlying felony  
 27 convictions, and expressly restored their Second Amendment rights to them. Article IV, section 1  
 28 of the United States Constitution provides that “Full Faith and Credit shall be given in each State  
 to the public Acts, Records, and judicial Proceedings of every other State.” “That Clause requires

1 each State to recognize and give effect to valid judgments rendered by the courts of its sister  
 2 States.” *V.L. v. E.L.*, -- U.S. --, 136 S.Ct. 1017, 1020 (2016). The Supreme Court has explained  
 3 that the “animating purpose” of this Clause was:

4 to alter the status of the several states as independent foreign sovereignties, each  
 5 free to ignore obligations created under the laws or by the judicial proceedings of  
 6 the others, and to make them integral parts of a single nation throughout which a  
 remedy upon a just obligation might be demanded as of right, irrespective of the  
 state of its origin.

7 *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 232, 118 S.Ct. 657, 663 (1998) (quoting *Milwaukee*  
 8 *County v. M.E. White Co.*, 296 U.S. 268, 277, 56 S.Ct. 229 (1935)).

9 *Baker* made it clear to distinguish the Clause’s command as between legislative acts of  
 10 other states, and state court judgments. Specifically, the Court stated that the Clause “does not  
 11 compel ‘a state to substitute the statutes of other states for its own statutes dealing with a subject  
 12 matter concerning which it is competent to legislate.’” *Baker*, 522 U.S. at 232 (citing *Pacific*  
 13 *Employers Ins. Co. v. Industrial Accident Comm’n*, 306 U.S. 493, 501, 59 S.Ct. 629, 632 (1939)).  
 14 The Court further clarified: “Regarding judgments, however, the full faith and credit obligation  
 15 is exacting. A final judgment in one State, if rendered by a court with adjudicatory authority over  
 16 the subject matter and persons governed by the judgment, qualifies for recognition throughout  
 17 the land.” *Baker*, 522 U.S. at 233 (citing *Matsushita Elec. Industrial Co. v. Epstein*, 516 U.S.  
 18 367, 373, 116 S.Ct. 873 (1996), and *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 485, 102  
 19 S.Ct. 1883, 1899 (1982)).

20 Importantly, the Court held that there is no “roving public policy exception” to the full  
 21 faith and credit due judgments, and that the Clause orders submission even to the hostile policies  
 22 reflected in the judgment of another state. *Baker*, 522 U.S. at 233. See also, *Estin v. Estin*, 334  
 23 U.S. 541, 546 (1948); *Williams v. North Carolina*, 317 U.S. 287 (1942) (requiring North  
 24 Carolina to recognize change in marital status effected by Nevada divorce decree contrary to the  
 25 laws of North Carolina); *V.L. v. E.L.*, 136 S.Ct. at 1020 (a state may not disregard the judgment  
 26 of a sister state because it deems it to be wrong on the merits) (citing *Milliken v. Meyer*, 311 U.S.  
 27 457, 462, 61 S.Ct. 339 (1940)).

28 Here, the criminal cases of Messrs. Linton, Stewart, and Jones ended in final judgments



1 that conclusively terminated those matters. (Linton Exhs. A and B; Stewart Exh. A; Jones Exh.  
 2 A). These are judgments of other states, in that they constituted the full and final disposition of  
 3 those matters. They are judgments that must be honored without regard or reference to policy.  
 4 Defendants’ policies refusing to honor these judgments of other states, therefore, violate the  
 5 Constitution’s Full Faith and Credit Clause, and its enabling statute, 28 U.S.C. § 1738.

6 **D. PLAINTIFFS ARE ENTITLED TO JUDGMENT ON THEIR CLAIM ALLEGING VIOLATION OF**  
 7 **THE PRIVILEGES AND IMMUNITIES CLAUSE (ART. IV, § 2) AND THE PRIVILEGES OR**  
 8 **IMMUNITIES CLAUSE (AMEND. XIV).**

9 As noted above, the Department’s position, which purports to follow Pen. Code § 29800  
 10 literally, is not even faithfully applied *here*. For California has its own process in place by which  
 11 persons who have suffered felony convictions, where the crimes are wobblers and are  
 12 subsequently reduced to misdemeanors pursuant to Pen. Code § 17(b), will have their firearms  
 13 rights restored to them. A “wobbler” is an offense that is chargeable, or in the discretion of the  
 14 court, punishable as either a felony or a misdemeanor; that is, they are punishable either by a  
 15 term in state prison or by imprisonment in county jail or by fine. *Sannmann v. Department of*  
 16 *Justice*, 47 Cal.App.5th 676, 679 n.2 (2020) (citing *People v. Park*, 56 Cal.4th 782, 789 (2013)).  
 17 “We point out that when a prior offense is a “wobbler,” a plea or verdict does not establish  
 18 whether it is a felony; rather the sentence does.” *People v. Williams*, 49 Cal.App.4th 1632, 1639  
 19 n.2 (1996); *see also, United States v. Fitzgerald*, 935 F.3d 814, 816 (9th Cir. 2019) (a court must  
 20 look to how the defendant was actually punished). And as the Department itself acknowledges,  
 21 “[a] reduction to a misdemeanor pursuant to PC Section 17 restores the person’s right to possess  
 22 a firearm.” (Lee Decl. Exh. C at p. 081). *See also, People v. Gilbreth*, 156 Cal.App.4th 53, 57-78  
 23 (2007) (reversing conviction for possession of a firearm by a felon). Mr. Matsumoto testified that  
 24 this manner in which some former felons in California have their firearms rights restored to them  
 25 here is “frequent.” (Matsumoto Depo. at 67-22 – 68:15).

26 In other words, California engages in the fiction that certain felony convictions incurred  
 27 here are “deemed” not to have occurred in the first place, when they are subsequently reduced to  
 28 misdemeanors pursuant to Pen. Code § 17(b). (Matsumoto Depo. at 69:7-17). But when it comes  
 to convictions suffered in *other* states, subsequent action deeming the conviction not to exist is

1 simply ignored. (Id., at 69:20 – 70:1; 70:18-23). And while the Department gives lip service to  
 2 the precept that “the laws of the particular state where the conviction occurred apply,” ultimately  
 3 it does not matter, for California simply disregards any other state’s post-conviction nullification  
 4 of the conviction, relying on its fallback position that Pen. Code § 29800 controls absolutely  
 5 when it comes to *out-of-state* former felons, as discussed at length above. This is simply  
 6 discrimination, favoring non-violent California felons who are able to have their firearms rights  
 7 restored to them, while ignoring the rights of non-violent former felons convicted in other states  
 8 who have no remedy absent a gubernatorial or “presidential pardon.” (Richards Decl., ¶ 5).

9 This disparate and favorable treatment of California former felons, who have a path to  
 10 regaining a fundamental constitutional right, while denying *any* path to out-of-state former  
 11 felons, violates the Privileges and Immunities Clause, art. IV, § 2 of the Constitution, and the  
 12 Privileges or Immunities Clause of the Fourteenth Amendment, because the policy violates, in  
 13 differing respects, the constitutional right to travel as set forth in *Saenz v. Roe*, 526 U.S. 499, 119  
 14 S.Ct 1518 (1999), as follows.

15 **1. Defendants’ Policies Violate Plaintiff Linton’s Right to Travel to California**  
 16 **Under Art. IV § 2 of the Constitution.**

17 The Privileges and Immunities Clause, also known as the “Comity Clause,” states, “The  
 18 Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several  
 19 States.” U.S. Const., art. IV, § 2, cl. 1. “The primary purpose of this clause, like the clauses  
 20 between which it is located—those relating to full faith and credit and to interstate extradition of  
 21 fugitives from justice—was to help fuse into one Nation a collection of independent, sovereign  
 22 States. It was designed to insure to a citizen of State A who ventures into State B the same  
 23 privileges which the citizens of State B enjoy.” *Toomer v. Witsell*, 334 U.S. 385, 395, 68 S.Ct.  
 24 1156 (1948).

25 In *Saenz*, the Court’s most substantive case reaffirming the constitutional right to travel,  
 26 the Court considered a challenge to a California statute limiting the welfare benefits available to  
 27 new residents of the state. 526 U.S. at 492. Through Justice Stevens’s majority opinion affirming  
 28 the Ninth Circuit in enjoining the statute, the case largely stands for and affirms a constitutional  
 right to travel. In discussing this right, the majority noted that a right to travel, “firmly embedded



1 in our jurisprudence[,]” embraces at least three different components. *Id.* at 498-99. The first  
 2 component is the right of a citizen to enter and leave another state. The second component is the  
 3 right to be treated “as a welcome visitor rather than an unfriendly alien when temporarily present  
 4 in the second state. This second component is protected by the Privileges and Immunities Clause  
 5 of Art. IV, § 2 of the Constitution. “Thus, by virtue of a person’s state citizenship, a citizen of  
 6 one State who travels in other States, intending to return home at the end of his journey, is  
 7 entitled to enjoy the ‘Privileges and Immunities of Citizens in the several States’ that he visits.”  
 8 526 U.S. at 501.

9 This “second component” applies to plaintiff Linton, as he currently resides in Nevada.  
 10 His move to Nevada this year was done for mixed motives, but a very real and substantial factor  
 11 that motivated his move was because California still considers him to be a “felon,” prohibited  
 12 from owning or purchasing firearms.” (Linton Decl., ¶ 3.) That he cannot exercise an important  
 13 and fundamental constitutional right available to other law-abiding citizens, until this matter may  
 14 be resolved, was an important reason for moving. (*Id.*) However, he continues to have a  
 15 residential interest here, including a longstanding mining claim (i.e., an annual lease) in a remote  
 16 property in Placer County. (*Id.*, ¶ 4.) Though he wishes to return to California to live someday,  
 17 he is unwilling to surrender his constitutional rights in order to do so. (*Id.*, ¶ 6).

18 Defendants’ policies which effectively allow persons convicted of felony wobblers in  
 19 California to regain their firearms rights, by engaging in the legal fiction that a § 17(b) reduction  
 20 deems the felony conviction not to have occurred, while refusing to honor other states’ final  
 21 judgments that those convictions were similarly nullified, violates Plaintiff Linton’s right to  
 22 reenter the state without forfeiting a substantial liberty interest.

23 **2. Defendants’ Policies Violate All Individual Plaintiffs’ Right to Travel to**  
 24 **California Under the Fourteenth Amendment.**

25 Returning to *Saenz*, the “third component” of the right to travel, as Justice Stevens  
 26 discusses in the majority opinion, is the right of a newly arrived citizen to the same privileges  
 27 and immunities enjoyed by citizens of that same state, a right protected not only by the new  
 28 arrival’s status as a state citizen, but also by his or her status as a citizen of the United States. 526  
 U.S. at 502. This is a right that is protected by the Privileges or Immunities Clause of the

1 Fourteenth Amendment. Therefore, the Court concluded, the statute at issue unconstitutionally  
 2 discriminated between established and newly-arrived residents of California. *Id.* at 505. And this  
 3 discriminatory treatment of residents under this component was subject to strict scrutiny. *Id.*  
 4 (citing *Shapiro v. Thompson*, 394 U.S. 618, 634, 89 S.Ct. 1322, 1331 (1969) (any classification  
 5 which serves to penalize the exercise of that right, unless shown to be necessary to promote a  
 6 compelling governmental interest, is unconstitutional.)) In *Saenz*, which was ultimately decided  
 7 under this third component of the right to travel, California had imposed a durational residency  
 8 requirement on welfare benefits by limiting those benefits during a recipient’s first year of  
 9 California residency to the amount that the recipient would have received in the state of his prior  
 10 residence. 526 U.S. 489. The Court held that the statute unconstitutionally discriminated between  
 11 old and newly arrived residents of California. *Id.*, at 505.

12 Under a third-component claim involving the right to travel, strict scrutiny should apply.  
 13 *Shapiro*, 394 U.S. at 634. A statute that unreasonably burdens the right to travel is subject to  
 14 strict scrutiny and will be struck down as unconstitutional “unless shown to be necessary to  
 15 promote a compelling governmental interest.” *Memorial Hosp. v. Maricopa County*, 415 U.S.  
 16 250, 262, 94 S.Ct. 1076 (1974); *Attorney General of N.Y. v. Soto-Lopez*, 476 U.S. 898, 904–05,  
 17 n.4, 106 S.Ct. 2317 (1986). The heavy burden of justification is on the State, and the court will  
 18 closely scrutinize the challenged law in light of its asserted purposes. *Dunn v. Blumstein*, 405  
 19 U.S. 330, 343, 92 S.Ct. 995 (1972).

20 Here, defendants’ policies which allow the restoration of firearm rights to persons  
 21 convicted of less serious, non-violent felonies in California, while denying any recourse or  
 22 remedy (except a “presidential pardon” – see Richards Decl., ¶ 5), is discriminatory and cannot  
 23 withstand such scrutiny. There is no reason for the State to permit a § 17(b) reduction to a  
 24 misdemeanor here, which would allow the restoration of Second Amendment rights, while  
 25 purporting to apply an inflexible, literal application of Pen. Code § 29800 to anyone convicted  
 26 elsewhere, when the offenses were substantially the same. For example, a prior felony conviction  
 27 for evading a police officer under California Vehicle Code § 2800.2 cannot form the basis for a  
 28 felon in possession of a firearm charge, where the underlying conviction had been reduced to a

1 misdemeanor. *Gilbreth*, 156 Cal.App.4th at 57. Yet, Plaintiff Linton, who was convicted of an  
 2 analogous crime in Washington State, has absolutely no recourse or remedy except a  
 3 “presidential pardon” (Richards Decl., ¶ 5). This is simply a policy that favors persons convicted  
 4 of non-violent felonies in California, over people convicted of similar crimes in other states.

5 Plaintiff Stewart was convicted of third degree burglary in Arizona, a Class C felony. In  
 6 California, the analogous crime would be second degree (commercial) burglary, a wobbler under  
 7 Pen. Code §§ 460 and 461. A person convicted of that crime in California could thus have the  
 8 conviction reduced to a misdemeanor, and have their firearms rights restored.

9 And Plaintiff Jones was convicted of “credit card abuse,” a third degree felony under  
 10 Texas law. And while there is no such crime in California, the closest analogue might be  
 11 fraudulent use of a credit card, Pen. Code § 484g, a wobbler. Pen. Code § 489.

12 Had plaintiffs been convicted here of similar crimes 30 years ago, they doubtless would  
 13 be able to have their rights restored to them. But because the convictions emanated from other  
 14 states, the Department applies section 29800(a) literally without regard to any subsequent action.  
 15 The issue here is the disparate treatment of citizens. And thus, no matter what justification the  
 16 State may use to attempt to prohibit felons from owning firearms in the first place, that is not our  
 17 concern with regard to this claim. Any public safety justifications regarding sections 29800(a)  
 18 and 30305 do not address the disparity in treatment, and the lack of remedies available to persons  
 19 convicted here, as opposed to any other state. Either Pen. Code §§ 29800 and 30305 are applied  
 20 evenly, or they are not, and if not, strict scrutiny demands the State to justify why that is.

#### 21 22 IV. CONCLUSION

23 For the foregoing reasons, plaintiffs respectfully submit that summary judgment should  
 24 be entered in their favor on all claims. In the alternative, partial summary judgment should be  
 25 entered in their favor on each count respectively.

26 Dated: June 22, 2020

**SEILER EPSTEIN LLP**

/s/ George M. Lee

George M. Lee

Attorneys for Plaintiffs

1 George M. Lee (SBN 172982)  
gml@seilerepstein.com

2 **SEILER EPSTEIN LLP**  
275 Battery Street, Suite 1600  
3 San Francisco, CA 94111  
Phone: (415) 979-0500  
4 Fax: (415) 979-0511

5 Attorneys for Plaintiffs  
6 CHAD LINTON, PAUL MCKINLEY STEWART,  
7 KENDALL JONES, FIREARMS POLICY FOUNDATION,  
8 FIREARMS POLICY COALITION,  
9 SECOND AMENDMENT FOUNDATION,  
10 THE CALGUNS FOUNDATION and MADISON  
11 SOCIETY FOUNDATION

12 **UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA**

14 CHAD LINTON, et al.,

15 Plaintiffs,

16 vs.

17 XAVIER BECERRA, in his official capacity as  
18 Attorney General of California, et al.,

19 Defendants.

Case No. 3:18-cv-07653-JD

**DECLARATION OF PLAINTIFF CHAD  
LINTON IN SUPPORT OF PLAINTIFFS’  
MOTION FOR SUMMARY JUDGMENT, OR IN  
THE ALTERNATIVE, FOR PARTIAL  
SUMMARY JUDGMENT**

**[FRCP 56]**

Courtroom 11, 19<sup>th</sup> Floor  
Judge: Hon. James Donato

22 **DECLARATION OF CHAD LINTON**

23 I, Chad Linton, declare as follows:

24 1. I am an adult resident, currently residing in the County of Lyon, Nevada. I am a  
25 named plaintiff in this matter and if called as a witness, I could competently testify to these facts.  
26

27 2. This declaration is made in support of plaintiffs’ motion for summary judgment,  
28 or in the alternative, for partial summary judgment.

1           3.       Earlier this year, I moved with my family from California to Nevada, where we  
2 now currently live. The primary reasons for moving to Nevada were mixed, including the cost of  
3 living in California. However, a very real and substantial factor that motivated our move was the  
4 fact that California still considers me to be a “felon,” as a person prohibited from owning or  
5 purchasing firearms. The fact that I cannot exercise an important and fundamental constitutional  
6 right available to other law-abiding citizens, until this matter may be resolved, was an important  
7 reason why we moved.

8           4.       I continue to maintain ties to California, including a residential interest here. I  
9 have a longstanding mining claim, that is, a recurring annual lease on property located in Placer  
10 County. I have substantially improved that property by building a cabin there, at an approximate  
11 cost of \$10,000.00. That cabin is located in a remote area of the county, on which there is much  
12 wildlife, including bears and mountain lions. Moreover, that area is so remote that no cell phone  
13 reception is available there. A law enforcement response to any incident, even if called, would be  
14 at least 45 minutes away. Accordingly, I feel unsafe and unprotected in that area without at least  
15 the option of having appropriate firearms available or at hand if needed.

16           5.       In addition, I continue to maintain close ties to family and friends in California,  
17 and I would like to be able to possess or handle firearms or ammunition for recreational  
18 purposes, such as target shooting, while I am visiting. Collecting and shooting firearms was an  
19 important way of life for my family until I learned of the State’s position that I am considered to  
20 be a “prohibited person.” I desire to exercise my rights guaranteed by the Second Amendment,  
21 but cannot due to the defendants’ policies and practices, and interpretation of their laws, which is  
22 at issue here.

23           6.       I was born and raised in California, and intend and desire to return with my family  
24 to live there permanently, but cannot, due to the defendants’ laws, policies, and practices, which  
25 consider me to be a permanent felon. I am not willing to surrender my constitutional rights to  
26 live in California, and am thus deterred from returning due to these laws, policies, and practices.

27           7.       I served in the United States Navy from 1986 to 1988. On or about August 20,  
28 1987, while I was stationed at Whidbey Island Naval Air Station, Washington, I made an error in

1 judgment. While on a motorcycle, and traveling at a high rate of speed, I went past a  
2 Washington State Police car. For a brief period of time, I thought perhaps I might be able to  
3 make it back to NAS Whidbey Island before the Washington State Police officer would be able  
4 to catch up to me, and I accelerated. However, after a few moments, I reconsidered that idea,  
5 pulled over to the side of the highway, and voluntarily allowed the state trooper to catch up to  
6 me. I was arrested and did not resist my arrest in any way.

7 8. I was charged in Washington State, Island County Superior Court, with  
8 attempting to evade a police vehicle, a “Class C felony” under section 46.61.024 of the Revised  
9 Code of Washington (“RCW”), and with driving under the influence, charged as a misdemeanor.  
10 I spent seven days in jail.

11 9. On or about December 29, 1987, I entered pleas of guilty to both Count I  
12 (Attempting to Evade a Pursuing Police Vehicle, RCW 46.61.024) and Count II (Driving While  
13 Intoxicated, RCW 46.61.502). I was sentenced to seven days in jail, with credit for all seven  
14 days served, was required to complete community service, paid fines, and successfully  
15 completed all other terms of probation. At the time of the sentencing, the Washington State  
16 court judge, who was sympathetic to me, told me that if I successfully completed all terms of my  
17 probation, that the court would reduce the matter to a misdemeanor and have the matter  
18 discharged from my records. I had no reason to believe that this had not occurred. In fact, in  
19 1988, I received a certificate of discharge, showing that I successfully completed probation.  
20 That certificate included a statement that “the defendant’s civil rights lost by operation of law  
21 upon conviction be HEREBY RESTORED.”

22 10. After being discharged from the Navy, in 1988, I moved back to California.  
23 Since moving back to California, I have undergone multiple background checks and fingerprint-  
24 based “Live Scan” database queries of law enforcement records, in connection with licensing,  
25 none of which revealed the presence of a felony conviction in another state. I had also  
26 reasonably relied upon the statements made by the trial judge in Washington State, in believing  
27 that the attempted evading charge had been reduced to a misdemeanor, and that the restoration of  
28

1 my rights upon successful completion of probation entitled me to own firearms legally.

2 11. In fact, since 1988, I had successfully and legally purchased and acquired several  
3 firearms, all with the approval of the State of California having passed all state and federal  
4 background checks.

5 12. I have been and remain a law-abiding citizen. I was married and have raised a  
6 family in California.

7 13. On or about December 26, 2015, I attempted to make a purchase of a handgun,  
8 and was denied the purchase by the State of California. I was informed by the California DOJ  
9 that I was prohibited from taking possession of the handgun due to the existence of a prior  
10 felony, and that the disqualifying offense was the Washington State matter dating back to 1987,  
11 which I believed had been reduced to a misdemeanor. Nevertheless, based upon the DOJ's  
12 denial of the firearm purchase, I hired an attorney in the State of Washington. On my behalf, he  
13 re-opened the criminal proceedings, in which I then withdrew my guilty plea, and entered a not-  
14 guilty plea, which was entered retroactively.

15 14. On March 21, 2016, the Superior Court of the State of Washington, Island County  
16 issued its final Order on Motion Re: Vacating Record of Felony Conviction, in which the court  
17 specifically found that the offense for which I was convicted was not a violent offense under  
18 Washington State law. A true and correct certified copy of that record is attached hereto as  
19 **Linton Exhibit A**. Accordingly, the Superior Court granted the motion to vacate conviction  
20 records related to the underlying offense, set aside the guilty plea, and released me from all  
21 penalties and disabilities resulting from the offense. (Exhibit A, p. 2.)

22 15. On April 18, 2016, the Superior Court of the State of Washington, Island County,  
23 further issued, upon a petition filed by my attorney, an Order Restoring Right to Possess  
24 Firearms pursuant to Revised Code of Washington (RCW) 9.41.040(4). A true and correct  
25 certified copy of this order is attached as **Linton Exhibit B**. As part of that petition, and order,  
26 the court found that I was qualified to have the right to possess firearms restored to me, and  
27 accordingly, ordered "that Petitioner Chad Linton's civil rights and right to possess firearms are  
28



SEILER EPSTEIN LLP  
Attorneys at Law

1 FULLY RESTORED pursuant to RCW 9.41.040(4).” (*Id.*) The court further ordered the  
2 Washington State Patrol to transmit a copy of its Order to the Federal Bureau of Investigation.

3 16. After these proceedings, in order to determine whether I was still prohibited from  
4 owing or purchasing firearms in the State of California, on or about October 25, 2016, I  
5 voluntarily underwent a Personal Firearms Eligibility Check (“PFEC”) pursuant to Cal. Pen.  
6 Code § 30105(a) to confirm my eligibility to purchase and/or possess a firearm. Based upon this  
7 check, the California DOJ’s Bureau of Firearms informed me that I was eligible both to possess  
8 and purchase firearms, based upon a search of California’s records. The PFEC form indicated,  
9 however, that the actual purchase of a firearm would involve the search of a federal database by  
10 the DOJ. A true and correct copy of my PFEC results, dated October 25, 2016, is attached hereto  
11 as **Linton Exhibit C**.

12 17. Based upon the court orders from the State of Washington, and the PFEC results,  
13 on October 30, 2018, I attempted to purchase a rifle, but again, I was denied. On or about  
14 November 7, 2016, the California DOJ informed me that I was ineligible to purchase or possess  
15 firearms pursuant to its review of state and/or federal records which purported to show that I was  
16 a “Felon: Any person who has been convicted of a felony under the laws of the United States, of  
17 the State of California, or of any other state, government, or country.” A true and correct copy of  
18 the DOJ’s letter denying me the right to purchase a firearm is attached hereto as **Linton Exhibit**  
19 **D**. But the only felony conviction I had ever suffered was the Washington State conviction,  
20 which by that time had already been set aside, vacated, and for which my firearms rights  
21 specifically had been restored to me by the Washington court. (Exhibits A and B.)

22 18. After this firearm denial, I requested and underwent a “Live Scan” fingerprint-  
23 based background check request with the DOJ directly. On or about November 10, 2016, the  
24 results of that Live Scan were returned and showed the presence of no felony convictions.  
25

26 19. On or about February 2, 2017, my attorney, Adam Richards, wrote the DOJ to  
27 contest its determination regarding my status as a prohibited person. In furtherance of this claim  
28 of inaccuracy and/or incompleteness, Mr. Richards provided the DOJ with copies of the



1 Washington Court’s Order vacating the felony conviction (Exhibit A), as well as the Order  
2 restoring my firearm rights (Exhibit B). A true and correct copy of Mr. Richards’s letter to the  
3 DOJ dated February 2, 2017, is attached hereto as **Linton Exhibit E**. The DOJ did not respond  
4 to this request and communication.

5 20. My attorney made a second request to the DOJ to correct my record, on  
6 November 11, 2017. On or about January 30, 2018, in apparent response to my attorney’s letter,  
7 the DOJ sent me a letter directly, stating that “the entry in question cannot be found on your  
8 California criminal history record, therefore, no further investigation is required.” A copy of the  
9 California DOJ’s letter to me dated January 30, 2018, is attached as **Linton Exhibit F**. In  
10 addition, on about March 6, 2018, the DOJ sent me an additional record stating that “as of the  
11 date of this letter, your fingerprints did not identify any criminal history maintained by the  
12 Bureau of Criminal Information and Analysis.” A true and correct copy of the DOJ’s letter dated  
13 March 6, 2018, is attached as **Linton Exhibit G**.

14 21. Based upon the letters from the DOJ (Exhibits F and G) which appeared to be  
15 responsive to my attorney’s letters, on March 20, 2018, I believed that the confusion had been  
16 cleared up, and that the DOJ’s records had been corrected. I then attempted to purchase a .357  
17 revolver, for self-defense in the home, but once again, I was denied. On or about March 27,  
18 2018, the DOJ sent me a letter stating that the attempted firearm purchase was denied due to the  
19 presence of a prior felony conviction—again, the only possible such matter being the now-  
20 vacated Washington matter.

21 22. On or about April 3, 2018, agents of the California Department of Justice came to  
22 my home, and seized several firearms that I had legally acquired and owned throughout the  
23 years, including an antique, family-heirloom shotgun that was once owned by my grandfather.  
24 All of these firearms were acquired through legal purchases or transfers, through federally-  
25 licensed firearm dealers (FFLs), and pursuant to DOJ DROS (“Dealer’s Record of Sale”)  
26 background checks. As stated, over the years, I had passed many other background checks, and  
27 Live Scan fingerprint-based checks in connection with professional licensing, none of which  
28

SEILER EPSTEIN LLP  
Attorneys at Law

1 turned up the presence of any felony convictions, and in conjunction with the trial judge’s  
2 statements at my sentencing in 1987, I had believed that the matter had been reduced to a  
3 misdemeanor and vacated at the time of discharge. At the time the DOJ agents came to my  
4 home, my wife showed the DOJ agents the Washington State court orders that vacated the felony  
5 conviction, and restored my gun rights. I was informed by the DOJ agents that they had sought  
6 approval from Deputy Attorney General Robert Wilson to return the firearms to me, but Mr.  
7 Wilson denied this request.

8 23. On September 24, 2018, Mr. Richards, spoke with Deputy Attorney General  
9 Wilson about this ongoing inability of DOJ to reconcile and correct its records with the (already-  
10 provided) records showing that the Washington State felony had been vacated and firearms  
11 rights had been restored. A true and correct copy of Mr. Richards’s letter of December 4, 2018  
12 to Deputy Attorney General Wilson, confirming this conversation, is attached as **Linton Exhibit**  
13 **H.**

14 24. The DOJ did not respond to Mr. Richards’s request to reverse their decision, or  
15 change their policy, and I have been forced to file this action to vindicate my rights.

16 25. I am therefore continuing to be deprived of the ability to exercise my rights  
17 guaranteed by the Second Amendment while here in California, through the defendants’ policies,  
18 practices, and interpretation of law, which prohibit me from owning or possessing firearms. I  
19 have been and am continuing to be deprived of the ability to exercise a fundamental  
20 constitutional right to possess a firearm for lawful purposes, including for self-defense in our  
21 cabin. I desire to exercise, and would exercise these rights, but for the defendants’ policies that  
22 prohibit me from doing so.

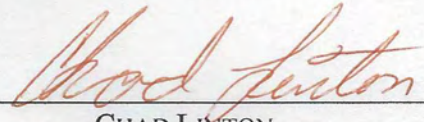
23 26. For these reasons, and as set forth in the motion, we respectfully request summary  
24 judgment in our favor on all claims.

25 //  
26 //  
27 //  
28 //

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

Dated:

6/18/2020



CHAD LINTON

**SEILER EPSTEIN LLP**  
Attorneys at Law

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**LINTON EXHIBIT A**



STATE OF WASHINGTON )  
COUNTY OF ISLAND ) ss

FILED  
DEBRA VAN PELT  
ISLAND COUNTY CLERK  
2016 MAR 21 PM 3:34

I, Debra Van Pelt, Clerk of Island County and ex-officio clerk of the Superior Court, do hereby certify that this instrument consisting of 3 page(s), is a full, true and correct copy of the original now on file in my office; WITNESS my hand and official seal this 30<sup>th</sup> day of November, 2016.

DEBRA VAN PELT  
By:   
Deputy  
Coupeville, Washington

SUPERIOR COURT OF WASHINGTON  
ISLAND COUNTY

STATE OF WASHINGTON,  
Plaintiff,

vs.

CHAD JAY LINTON,  
  
Defendant.

No. 87-1-00064-9

Order on Motion Re: **Vacating Record of Felony Conviction Granted (ORVCJG)**

Clerk's Action Required, para. 3.6

I. Basis

This matter comes before the court on defendant's motion for order **vacating** record of felony conviction pursuant to RCW 9.94A.640. The court having heard argument of the parties and considered the case records and files, and the pleadings submitted on the matter.

II. Findings

- 2.1 Adequate notice was given to the appropriate parties and agencies.
- 2.2 On or about December 29, 1987, the defendant was convicted of the following offense(s):  
Cause No: 87-1-00064-9 Count: 1 Offense: Attempting to Elude Pursuing Police Vehicle in violation of RCW 46.61.024.
- 2.3 Defendant was discharged under RCW 9.94A.637 as having completed the requirement of his or her sentence for the offense listed in paragraph 2.2 (RCW 9.94A.640).
- 2.4 Defendant satisfied the following requirements of RCW 9.94A.640(2) or has met the equivalent of these requirements as they would be applied to a person convicted of a crime committed after July 1, 1984:

There are no criminal charges pending against the defendant in any court of this state or another state, or in any federal court (RCW 9.94A.640(2)(a)).

The offense for which the defendant was convicted is **not** one of the following offenses (RCW 9.94A.640(2)(b), (c), (g)):

A violent offense as defined in RCW 9.94A.030
A crime against persons as defined in RCW 43.43.830
A class C felony described in RCW 46.61.502(6) or 46.61.504(6)

- 2.5 The defendant has not been convicted of any new crime in this state, another state, or federal court since the date of discharge under RCW 9.94A.637 or expiration of probation, based upon the criminal history check of the following records (RCW 9.94A.640(2)(d)):
- Washington State Crime Information Center (WACIC), RCW 43.43.500 et seq;  
National Crime Information Center (NCIC), including the Interstate Identification Index (Triple I), 28 USC Section 534;  
Judicial Information System (JIS), including Defendant Case History (DCH) from the District and Municipal Court Information System (DISCIS), RCW 2.68 et seq. and JISCR; AND/OR  
Other: Washington State Patrol Washington Access To Criminal History (WATCH).
- 2.6 The offense for which the defendant was convicted was a class C felony, other than a class C felony described in RCW 46.61.502(6) or 46.61.504(6), and it has been at least five years since the date of discharge under RCW 9.94A.637 or expiration of probation (RCW 9.94A.640(2)(f)).

### III. Order

The court orders:

- 3.1 The motion for order **vacating conviction records of the following offense is granted.**

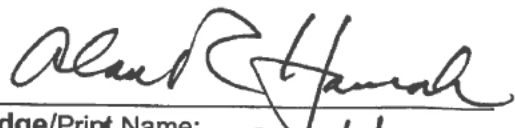
Cause No: 87-1-00064-9 Count: I Offense: Attempting to Elude Pursuing Police Vehicle in violation of RCW 46.61.024.

The court further orders that:

- 3.2 The defendant's guilty plea for the offense listed in paragraph 3.1 is withdrawn and a not guilty plea is entered.  
*And/Or*  
The **guilty verdict** for the offense listed in paragraph 3.1 is **set aside.**
- 3.3 The information or indictment for the offense listed in paragraph 3.2 is **dismissed.**
- 3.4 The defendant shall be released from all penalties and disabilities resulting from the offense listed in paragraph 3.1 and the conviction of that offense shall not be included in the defendant's criminal history for purposes of determining a sentence in any subsequent conviction. However, the conviction may be used in a later criminal prosecution.
- 3.5 For all purposes, including responding to questions on employment applications, the defendant may state that he or she has never been convicted of the offense listed in paragraph 3.1.

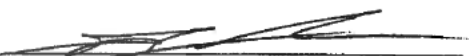
3.6 The clerk of the court shall immediately transmit a certified copy of this order to the Washington State Patrol and to the Island County Sheriff which agencies shall immediately update their records to reflect the vacation of the record of conviction of the offense(s) listed in paragraph 3.1. The Washington State Patrol shall transmit a copy of this order to the Federal Bureau of Investigation. The Washington State Patrol or local law enforcement agency may not disseminate or disclose a conviction that has been vacated under RCW 9.94A.640 to any person, except to other criminal justice enforcement agencies.

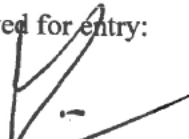
Dated: 5/21/2016

  
Judge/Print Name: Alan R Hancock

Presented by:

Approved for entry:

  
Brent Thompson, WSBA# 44778  
Attorney for Respondent

  
Michael Setstrom, WSBA# 46425  
Prosecuting Authority



**LINTON EXHIBIT B**


STATE OF WASHINGTON )  
COUNTY OF ISLAND ) ss

FILED  
DEBRA VAN PELT  
ISLAND COUNTY CLERK  
2016 APR 18 AM 11:47

I, Debra Van Pelt, Clerk of Island County and ex-officio clerk of the Superior Court, do hereby certify that this instrument consisting of 1 page(s), is a full, true and correct copy of the original now on file in my office. WITNESS my hand and official seal this ~~30th~~ day of November, 20 16.

DEBRA VAN PELT  
By:   
Deputy  
Coupeville, Washington

SUPERIOR COURT OF WASHINGTON  
ISLAND COUNTY

CHAD JAY LINTON,  
  
Petitioner,  
vs.  
STATE OF WASHINGTON,  
Respondent.

No. 16-2-00196-8

RCW 9.41.040(4) ORDER RESTORING  
RIGHT TO POSSESS FIREARMS

Clerk's Action Required


7  


THIS MATTER having come on for hearing before the above entitled court on a RCW 9.41.040(4) Petition for Order Restoring Right to Possess Firearms and the court having reviewed the Petition and having heard any objections thereto, and being otherwise fully advised:


THE COURT HEREBY FINDS on August 11, 1988 the Island County Superior Court discharged Petitioner and restored his civil rights lost as a result of Island County Superior Court Cause No. 87-1-00064-9; on March 21, 2016 the Island County Superior Court also vacated, set aside, dismissed, and released Petitioner from all penalties and disabilities resulting from Island County Superior Court Cause No. 87-1-00064-9; and the Petitioner is qualified, pursuant to RCW 9.41.040(4), to have the right to possess firearms fully restored; now therefore:

THE COURT HEREBY ORDERS that Petitioner Chad Linton's civil rights and right to possess firearms are FULLY RESTORED pursuant to RCW 9.41.040(4). The clerk of the court shall, forthwith, provide a certified copy of this Order to the Washington State Patrol-Identification Section. The Washington State Patrol shall transmit a copy of this order to the Federal Bureau of Investigation.

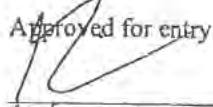
DONE IN OPEN COURT this 18<sup>th</sup> day of April, 2016.

  
JUDGE  
PAG TER

Presented by:

  
Brent Thompson, WSBA #44778  
Attorney for Petitioner

Approved for entry:

  
Michael Sotstrom, WSBA #46225  
Attorney for State of Washington

**LINTON EXHIBIT C**





State of California  
Department of Justice  
Bureau of Firearms



P.O. Box 820200, Sacramento, CA 94203-0200

**PERSONAL FIREARMS ELIGIBILITY CHECK (PFEC) NOTIFICATION**

October 25, 2016

(date check was completed)

CHAD JAY LINTON

[REDACTED]  
[REDACTED]

**THIS NOTICE IS FOR INFORMATION PURPOSES ONLY  
IT DOES NOT AUTHORIZE THE SALE OR TRANSFER OF ANY FIREARM**

- You are eligible to both possess and purchase firearms as of the date the check was completed. This determination is based on a check of California records.
- You are ineligible to either possess or purchase firearms as of the date the check was completed.
- You are eligible to possess firearms as of the date the check was completed, but ineligible to purchase firearms as of the date the check was completed.
- A firearms eligibility determination could not be confirmed as of the date the check was completed. Please contact (916) 227-7527 for more information.

*No person or agency may require or request another person to obtain a firearms eligibility check or notification of firearms eligibility pursuant to section 30105 of the Penal Code. A violation of these provisions is a misdemeanor.*

*If the applicant for a firearms eligibility check purchases, transfers, or receives a firearm through a licensed dealer as required by law, a waiting period and background check are both required.*

**PLEASE BE AWARE OF THE FOLLOWING**

**If you are ELIGIBLE to purchase:**

*Federal law does not authorize a check of the National Instant Criminal History Background Check System (NICS) as part of a Personal Firearms Eligibility Check (PFEC). Therefore, although the results of the PFEC indicate you are eligible to possess and purchase firearms, you could still be prohibited based on information in a federal database that the California Department of Justice was not authorized to check.*

*Upon application to purchase a firearm another background check will be conducted and the waiting period will apply.*

*A valid California Driver License or Identification Card is required at the time of purchase of any firearm.*

*A valid Alien Registration Card or I-94 is required at the time of purchase of any firearm if applicant is a non-U.S. citizen. The non-U.S. citizen applicant must also meet certain federal requirements to purchase a firearm, unrelated to the firearms eligibility background check.*

**If you are INELIGIBLE to purchase:**

*And if you are also ineligible to possess, you must relinquish any firearms in your possession to your local law enforcement agency or complete and follow the directions stated on the enclosed 'General Notice of Firearm Prohibition and Power of Attorney for Firearms Relinquishment, Sale or Transfer for Storage.'*

*If you have questions regarding this notification, please contact DOJ at (916) 227-7527.*

**LINTON EXHIBIT D**



**KAMALA D. HARRIS**  
**Attorney General**

*State of California*  
**DEPARTMENT OF JUSTICE**



**BUREAU OF FIREARMS**  
**P.O. BOX 820200**  
**SACRAMENTO, CA 94203-0200**  
**Telephone: (916) 227-7527**  
**Fax: (916) 227-3744**

November 07, 2016

**CHAD JAY LINTON**

**RE: Firearm Denial**

**Dear CHAD JAY LINTON:**

You recently applied to purchase a firearm. When a person applies to purchase a firearm in California, the California Department of Justice (the Department) is required by state and federal laws to examine its records to determine whether the purchaser is eligible under state and federal law to purchase and possess firearms. Your recent firearm purchase application is being denied because the Department's review of state and/or federal records matching your identifying information revealed the following information:

**Felon:** Any person who has been convicted of a felony under the laws of the United States, of the State of California, or of any other state, government, or country.

This determination was based upon information you provided in your application to purchase a firearm, such as your name, date of birth, driver's license number and physical description, but has not been confirmed with fingerprint comparison. It is possible that the criminal record may not be yours and may belong to another individual whose name and identifying information is similar to yours.

If you wish to challenge the accuracy of the Department's determination or the completeness of your criminal history record, please complete a request for Live Scan Service form (BCIA/BOF8016) located on the Bureau of Firearms web page at <http://oag.ca.gov/firearms>.

**FIREARMS CLEARANCE SECTION**  
**Bureau of Firearms**

For **KAMALA D. HARRIS**  
**Attorney General**

**LINTON EXHIBIT E**



LAW OFFICES OF

ROTHSCHILD WISHEK & SANDS LLP

765 UNIVERSITY AVENUE  
SACRAMENTO, CALIFORNIA 95825

TELEPHONE (916) 444-9845  
FACSIMILE (916) 640-0027

M. BRADLEY WISHEK  
SHANNON V. BAKER  
CLYDE M. BLACKMON  
ADAM J. RICHARDS  
ERIN L. BRENNAN  
AMIT SINGH

*Of Counsel*  
MICHAEL ROTHSCHILD  
QUIN DENVIR (1940-2016)  
KENDALL DAWSON WASLEY

*Retired*  
MICHAEL S. SANDS

February 2, 2017

**VIA U.S. MAIL**

State of California Department of Justice  
Bureau of Criminal Information and Analysis  
Record Review Unit  
P.O. Box 903417  
Sacramento, CA 94203-4170

Re: Chad Linton  
Claim of Alleged Inaccuracy or Incompleteness



To Whom It May Concern:

This office represents Chad Linton. We are in receipt of the letter from your office to Mr. Linton dated November 10, 2016. We are also in receipt of a letter from the Firearms Clearance Section dated November 7, 2016 informing Mr. Linton that his application to purchase a firearm has been denied due to a felony conviction. Please consider this letter as a claim of inaccuracy or incompleteness. The basis for this claim is that the DOJ appears to attribute a felony offense to Mr. Linton from the State of Washington. This offense was vacated by the Superior Court of Washington, County of Island and his right to own firearms was expressly restored by the court. I have enclosed two documents for the Department's review, both of which are stamped, certified copies of the relevant court record. The documents provide the following:

1. Document 1: Order on Motion Re: Vacating Record of Felony Conviction Granted.
  - a. This document provides, among other things, the following:
    - i. The defendant's guilty plea for the offense listed in paragraph 3.1 is withdrawn and a not guilty plea is entered.
    - ii. The guilty verdict for the offense listed in paragraph 3.1 is set aside.
    - iii. The defendant shall be released from all penalties and disabilities resulting from the offense listed in paragraph 3.1 and the conviction of that offense shall not be included in the defendant's criminal history for the purposes of determining a sentence in any subsequent conviction. However, the conviction may be used in a later criminal prosecution.
    - iv. For all purposes, including responding to questions on employment applications, the defendant may state that he or she has never been convicted of the offense listed in paragraph 3.1.
2. Document 2: Order Restoring Right to Possess Firearms.
  - a. This document provides, in summary, that the rights lost by defendant in the case number at issue are thereby restored and defendant is qualified, pursuant to

Record Review Unit  
Re: Claim of Alleged Inaccuracy or Incompleteness  
February 2, 2017  
Page 2

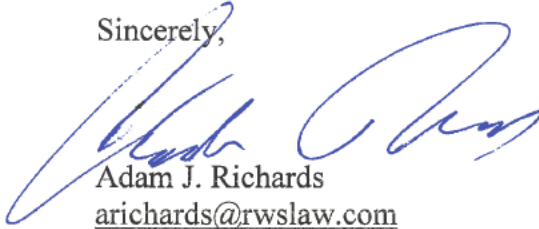
Washington law, to have the right to possess firearms fully restored. The court then orders that his rights are restored.

The enclosed court records unequivocally demonstrate that Mr. Linton's right to own and possess firearms was fully restored and that the offense which originally caused him to lose his rights, was fully vacated.

Based on the foregoing, please correct your record concerning Mr. Linton such that it reflects that he has not been convicted of a felony and that he is able to own and possess firearms.

Please contact me or Mr. Linton should you have any questions or concerns or should you disagree with this request and the information contained herein.

Sincerely,

A handwritten signature in blue ink, appearing to read "Adam J. Richards", is written over a faint, larger signature that is partially obscured.

Adam J. Richards  
[arichards@rwslaw.com](mailto:arichards@rwslaw.com)

AJR/clu

Enclosure: Claim of Alleged Inaccuracy or Incompleteness

cc: Chad Linton

**LINTON EXHIBIT F**

XAVIER BECERRA  
Attorney General

State of California  
DEPARTMENT OF JUSTICE



Bureau of Criminal Information and Analysis  
Record Review Section  
P. O. Box 903417  
Sacramento, CA 94203-4170

January 30, 2018

Chad Jay Linton  
[REDACTED]

RE: Criminal History Record  
[REDACTED]

Dear Mr. Linton:

This correspondence is in response to your claim of alleged inaccuracy or incompleteness in your California state summary criminal history record as maintained by the California Department of Justice (DOJ), received on May 24, 2017 and November 28, 2017.

The DOJ is required to record arrest and disposition information that is received from a law enforcement agency or court of this state. The entry in question cannot be found on your California criminal history record, therefore, no further investigation is required.

The event dated November 1, 2001 is not an arrest entry but was generated by California Alcohol Beverage Control when they conducted a fingerprint-based background check on you regarding your License Certification or Permit submission. This entry can only be deleted at the direction of the submitting agency. You must contact Alcohol Beverage Control and ask that they submit a request to the DOJ to remove the applicant entry.

If you have questions concerning firearms eligibility, etc., please contact the California Department of Justice, Bureau of Firearms, at (916) 227-1375.

If you have any further questions concerning this matter, please direct your correspondence to the Record Review Section at the address provided above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Annette AH PO".

ANNETTE AH PO, DOJ Administrator  
Record Review and Challenge Program  
Bureau of Criminal Information and Analysis

For XAVIER BECERRA  
Attorney General

**LINTON EXHIBIT G**





*XAVIER BECERRA*  
*Attorney General*

*State of California*  
**DEPARTMENT OF JUSTICE**

BUREAU OF CRIMINAL INFORMATION AND ANALYSIS

P.O. Box 903417  
SACRAMENTO, CA 94203-4170

March 06, 2018

CHAD JAY LINTON

[REDACTED]  
[REDACTED]

RE: California Criminal History Information

Dear Applicant:

This is in response to your record review request initiated due to either a notification regarding a delay in your firearms eligibility check or a notification that your firearms eligibility check was denied. As of the date of this letter, your fingerprints did not identify any criminal history record maintained by the Bureau of Criminal Information and Analysis. As requested, a copy of this record review has been sent to your designee.

This response does not constitute a complete firearms eligibility clearance. If you have any questions regarding your firearms clearance, please contact the Firearms Bureau directly at (916) 227-7527.

Record Review and Challenge Program  
Applicant Record and Certification Branch  
Bureau of Criminal Information and Analysis

For XAVIER BECERRA  
Attorney General

**LINTON EXHIBIT H**



LAW OFFICE OF  
**ADAM J. RICHARDS**

2530 J Street, Ste. 320  
Sacramento, California 95816

TELEPHONE (916) 399-3486

FACSIMILE (916) 823-3307

December 4, 2018

**SENT BY U.S. MAIL AND EMAIL TO Robert.Wilson@doj.ca.gov**

Deputy Attorney General Robert D. Wilson  
Office of the Attorney General  
California Bureau of Firearms  
1300 I St, Ste 125  
Sacramento, CA 95814

Re: DEPARTMENT DENIAL OF RIGHT TO PURCHASE A FIREARM --  
CHAD LINTON

Dear Mr. Wilson:

Thank you for speaking with me on Tuesday, September 24, 2018 about my client, Chad Linton. Based on our conversation, it is my understanding that the Department's position is that Mr. Linton is prohibited from owning or possessing firearms in the State of California pursuant to Penal Code section 29800 as a result of his vacated and dismissed 1988 felony conviction in the State of Washington. During our call, you stated that the only measure that would restore his rights, according to your Department, is a presidential pardon. As I informed you during our conversation, I strongly disagree with the Department's position as I believe it to be arbitrary and capricious for several reasons. As evidenced by the Washington State court records, certified copies of which were provided to your department, Mr. Linton's conviction was vacated and dismissed. The unequivocal language in the Washington State Superior Court order states, among other things, that 1) the information/indictment against him was dismissed, 2) that he shall be released from all penalties and disabilities resulting from the offense, 3) that the conviction was vacated, and 4) that for all purposes, defendant may state that he was never convicted of the offense. While this order in and of itself restores his right to own and possess firearms in all jurisdictions, including federally pursuant to 18 USC 921(a)(20)(B), Mr. Linton also received an express order from the Washington Superior Court restoring his right to own and possess firearms, a certified copy of which was also provided to your office. Your position that Washington orders have no authority over California is irrelevant and misses the crux of the issue; Washington courts are not seeking to modify a California order or case. Instead, the question of whether Mr. Linton was convicted of a felony resides with the jurisdiction in which the conviction allegedly occurred. Mr. Linton has no record in the State of California and now, effectively, has no record in the State of Washington.

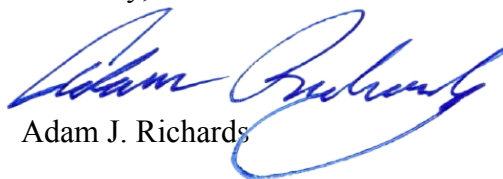
Deputy Attorney General Robert Wilson  
Re: Linton, Chad  
12/4/2018  
Page 2

The Department's position that Mr. Linton is still prohibited is spurious and deprives him of the free exercise of a fundamental right and equal protection under the law. The Department's current position is especially troubling given that the Department informed Mr. Linton in response to his Personal Firearms Eligibility Check (hereafter, "PFEC") that he was eligible to own and possess firearms in August of this year, 2018. Yet, he was denied the ability to purchase a firearm shortly thereafter. While, you made clear during our call that the PFEC only checks California law and records, Mr. Linton has no California record and he is not federally prohibited or prohibited in the state of Washington. Yet, California still maintains that he is prohibited as a result of his 1988 conviction for attempting to elude a pursuing police vehicle which has since been vacated and dismissed; His rights, including with respect to firearms were fully restored.

It seems that Mr. Linton has exhausted his remedies with the Department and, as you informed me during our call, the Department will not change its position with regard to its view of Mr. Linton's record and that he is currently prohibited from owning or possessing a firearm. Please confirm in writing within ten (10) days of this letter the Department's position that it will not change their policy as it pertains to the facts of this case nor issue to Mr. Linton written clearance to purchase a firearm.

Thank you for your attention to this matter.

Sincerely,



Adam J. Richards

1 George M. Lee (SBN 172982)  
gml@seilerepstein.com

2 **SEILER EPSTEIN LLP**  
275 Battery Street, Suite 1600  
3 San Francisco, CA 94111  
Phone: (415) 979-0500  
4 Fax: (415) 979-0511

5 Attorneys for Plaintiffs  
6 CHAD LINTON, PAUL MCKINLEY STEWART,  
7 KENDALL JONES, FIREARMS POLICY FOUNDATION,  
8 FIREARMS POLICY COALITION,  
9 SECOND AMENDMENT FOUNDATION,  
10 THE CALGUNS FOUNDATION and MADISON  
11 SOCIETY FOUNDATION

12 **UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA**

14 CHAD LINTON, et al.,

15 Plaintiffs,

16 vs.

17 XAVIER BECERRA, in his official capacity as  
18 Attorney General of California, et al.,

19 Defendants.

Case No. 3:18-cv-07653-JD

**DECLARATION OF PLAINTIFF PAUL  
MCKINLEY STEWART IN SUPPORT OF  
PLAINTIFFS' MOTION FOR SUMMARY  
JUDGMENT, OR IN THE ALTERNATIVE, FOR  
PARTIAL SUMMARY JUDGMENT**

**[FRCP 56]**

Courtroom 11, 19<sup>th</sup> Floor  
Judge: Hon. James Donato

20  
21  
22 **DECLARATION OF PAUL MCKINLEY STEWART**

23 I, Paul McKinley Stewart, declare as follows:

24 1. I am an adult resident of the County of San Bernardino, California, where I have  
25 lived for over 30 years. I am a named plaintiff in this matter and if called as a witness, I could  
26 competently testify to these facts.

27 2. This declaration is made in support of plaintiffs' motion for summary judgment,  
28

1 or in the alternative, for partial summary judgment.

2 3. On or about June 6, 1976, when I was 18 years old and living in Yuma, Arizona, I  
3 saw an unlocked telephone company truck in a commercial yard. I hopped the fence, reached  
4 into the truck, and took some lineman's tools back to my trailer. When the police came to my  
5 trailer to investigate the matter, I gave up the tools and offered no resistance to my arrest.

6 4. On or about August 3, 1976, I was found guilty of a first degree burglary, a  
7 felony, in the County of Yuma, Arizona. I was sentenced to three years of probation, and the  
8 Court imposed a suspended sentence during the probation period. That court's sentencing order  
9 specifically stated: "If in all respects you obey this order at the end of three years, or sooner upon  
10 the recommendation of your probation officer the judgment of guilty as well as this order may be  
11 vacated and the case dismissed. This action will restore to you all rights lost by this conviction  
12 except that notwithstanding such dismissal the conviction may be considered if you are again  
13 convicted of another offense."

14 5. On or about October 5, 1978, I successfully completed my probation and thus  
15 believed the matter was dismissed. My belief was reinforced by a statement made by my  
16 probation officer, who had also told me that the felony conviction had been dismissed due to my  
17 successful completion of probation.

18 6. Since moving to San Bernardino County, California, in or around 1988, I have  
19 married, raised a family, and am a father to two grown and successful children. I have remained  
20 steadily and gainfully employed.

21 7. On or about December 28, 2015, I went to a local gun dealer and attempted to  
22 purchase a pistol for self-defense in the home. Based upon the court's statements, and those of  
23 my probation officer, I did not believe I was prohibited from doing so. While I was waiting for  
24 clearance on the background check, I also attempted to purchase additional firearms.

25 8. On or about January 1, 2014, the DOJ sent me a letter regarding the attempted  
26 firearm purchase, informing me that my status was still "undetermined" and that the firearm  
27 purchase would be delayed. Eventually, I was told I was disqualified from purchasing or  
28

1 possessing any firearms due to the presence of a prior felony conviction.

2 9. I then requested a Live Scan fingerprint-based background check for a copy of my  
3 criminal records. On or about March 28, 2016, I received the results of the FBI criminal records  
4 check, which indicated a conviction in Arizona, but did not indicate whether it was classified as a  
5 felony or not. The FBI letter said that the matter was “undetermined” as to whether I was  
6 eligible to purchase or possess firearms.

7 10. On or about March 29, 2016, I filed with the Superior Court of Yuma County,  
8 Arizona, an application to restore my civil rights, including my firearm rights, and to set aside  
9 the judgment of guilt. On or about August 11, 2016, that Court issued an order restoring my  
10 firearm rights, and specifically set aside the judgment of guilt. A true and correct certified copy  
11 of the Court’s order of August 11, 2016, is attached as **Stewart Exhibit A**.

12 11. On or about February 2, 2018, the Arizona Department of Public Safety further  
13 sent me additional documentation showing that the felony conviction had been set aside and that  
14 my records had been so corrected.

15 12. On or about February 10, 2018, I attempted to purchase a firearm from a local  
16 firearms store in Redlands, California, believing that the Arizona Court order would  
17 automatically be updated in any background search. However, the DOJ denied this firearm  
18 purchase as well.

19 13. On or about February 27, 2018, the DOJ sent me a letter indicating that my  
20 attempt to purchase a firearm had again been denied on the basis of a prior felony conviction. A  
21 true and correct copy of the DOJ’s letter dated February 27, 2018, is attached as **Stewart Exhibit**  
22 **B**.

23 14. Subsequently, I had several telephone conversations with DOJ representatives  
24 regarding the firearms denial. They informed me that the Arizona felony conviction was  
25 disqualifying me from owning or possessing firearms, notwithstanding the Arizona Court’s  
26 order.  
27

28 15. I am therefore continuing to be deprived of the ability to exercise my rights

1 guaranteed by the Second Amendment here in California, through the defendants' policies,  
2 practices, and interpretation of law, which prohibit me from owning or possessing firearms. I  
3 have been and am continuing to be deprived of the ability to exercise a fundamental  
4 constitutional right to possess a firearm for lawful purposes, including for self-defense in the  
5 home. I desire to exercise, and would exercise these rights, but for the defendants' policies that  
6 prohibit me from doing so.

7 16. For these reasons, and as set forth in the motion, we respectfully request summary  
8 judgment in our favor on all claims.

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

10  
11 Dated: 06-18-2020

  
12 PAUL MCKINLEY STEWART

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
SEILER EPSTEIN LLP  
Attorneys at Law

**STEWART EXHIBIT A**





S1400CR7608338

FILED

2016 AUG 11 PM 12:24

LYNN FAZZ  
CLERK OF SUPERIOR COURT  
YUMA ARIZONA 85364

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YUMA

STATE OF ARIZONA,

Plaintiff,

vs.

PAUL MCKINLEY STEWART,

Defendant.

Case No. S1400CR7608338

ORDER

HONORABLE STEPHEN J. ROUFF  
COMMISSIONER TWO

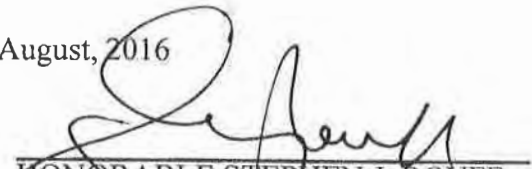
PAUL MCKINLEY STEWART, defendant above named, was adjudged guilty on August 12, 1976, to-wit: Count One, First Degree Burglary and Count Two, Theft.

On May 13, 2016, the defendant, submitted an Application to Restore Civil Rights, Restore Gun Rights, and Set Aside Judgment of Guilt.

The Court having determined the defendant successfully completed the sentence imposed herein,

**IT IS HEREBY ORDERED** that the civil rights lost at the time of sentencing are now restored and setting aside judgment of guilt and dismissal of the Information/Indictment, and those rights shall include the right to possess weapons as defined in A.R.S. §§13-604 and 13-3101.

DATED this 11<sup>th</sup> day of August, 2016

  
HONORABLE STEPHEN J. ROUFF  
JUDGE OF SUPERIOR COURT

1 Copy of the foregoing placed this  
2 day of August, 2016, in the  
boxes of:

3 Yuma County Attorney's Office  
4 and mailed to:


5 Office of the Attorney General  
6 Attn: Criminal History Unit  
7 1275 W. Washington Street  
Phoenix, AZ 85007-2926

8 Paul McKinley Stewart  
9 56050 Taos Trail  
Yucca Valley, California 92284

10  
11 LYNN FAZZ, Clerk of the Superior Court

12 By   
13 Deputy Clerk TAMMY SHERMAN  
14

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I certify this to be a true copy of  
the original on file in my office.  
Case No. 51400CR7608338  
Attested to this 26 day of August, 2019  
Lynn Fazz  
Clerk of Superior Court  
By   
Deputy Clerk

**STEWART EXHIBIT B**



BUREAU OF FIREARMS  
P.O. BOX 820200  
SACRAMENTO, CA 94203-0200  
Telephone: (916) 227-7527  
Fax: (916) 227-3744

February 27, 2018

PAUL MCKINLEY STEWART



RE: Firearm Denial

Dear PAUL MCKINLEY STEWART:

You recently applied to purchase a firearm. When a person applies to purchase a firearm in California, the California Department of Justice (the Department) is required by state and federal laws to examine its records to determine whether the purchaser is eligible under state and federal law to purchase and possess firearms. Your recent firearm purchase application is being denied because the Department's review of state and/or federal records matching your identifying information revealed the following information:

Felon: Any person who has been convicted of a felony under the laws of the United States, of the State of California, or of any other state, government, or country.

This determination was based upon information you provided in your application to purchase a firearm, such as your name, date of birth, driver's license number and physical description, but has not been confirmed with fingerprint comparison. It is possible that the criminal record may not be yours and may belong to another individual whose name and identifying information is similar to yours.

If you wish to challenge the accuracy of the Department's determination or the completeness of your criminal history record, please complete a request for Live Scan Service form (BCIA/BOF8016RR) located on the Bureau of Firearms web page at <http://oag.ca.gov/firearms>.

FIREARMS CLEARANCE SECTION  
Bureau of Firearms

For XAVIER BECERRA  
Attorney General

1 George M. Lee (SBN 172982)  
gml@seilerepstein.com

2 **SEILER EPSTEIN LLP**  
275 Battery Street, Suite 1600  
3 San Francisco, CA 94111  
Phone: (415) 979-0500  
4 Fax: (415) 979-0511

5 Attorneys for Plaintiffs  
6 CHAD LINTON, PAUL MCKINLEY STEWART,  
7 KENDALL JONES, FIREARMS POLICY FOUNDATION,  
8 FIREARMS POLICY COALITION,  
9 SECOND AMENDMENT FOUNDATION,  
10 THE CALGUNS FOUNDATION and MADISON  
11 SOCIETY FOUNDATION

12 **UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA**

14 CHAD LINTON, et al.,

15 Plaintiffs,

16 vs.

17 XAVIER BECERRA, in his official capacity as  
18 Attorney General of California, et al.,

19 Defendants.

Case No. 3:18-cv-07653-JD

**DECLARATION OF PLAINTIFF KENDALL  
JONES IN SUPPORT OF PLAINTIFFS'  
MOTION FOR SUMMARY JUDGMENT, OR IN  
THE ALTERNATIVE, FOR PARTIAL  
SUMMARY JUDGMENT**

**[FRCP 56]**

Courtroom 11, 19<sup>th</sup> Floor  
Judge: Hon. James Donato

22 **DECLARATION OF KENDALL JONES**

23 I, Kendall Jones, declare as follows:

24 1. I am an adult resident of the County of Sacramento, California, where I have lived  
25 for over 39 years. I am a named plaintiff in this matter and if called as a witness, I could  
26 competently testify to these facts.

27 2. This declaration is made in support of plaintiffs' motion for summary judgment,  
28

**SEILER EPSTEIN LLP**  
Attorneys at Law

1 or in the alternative, for partial summary judgment.

2 3. I am a 30-year veteran of the California Department of Corrections, having been  
3 employed as a Correctional Officer from 1984 through 2013. In 2013, I was specifically asked  
4 to return to provide firearms and other use-of-force training to the Department. Until my final  
5 honorable retirement in 2014, I served as the Primary Armory Officer for the CSP Solano facility  
6 for over 19 years, specializing in firearms, chemical agents, batons and use of deadly force  
7 training. I received my Peace Officers' Standards and Training (POST) Certification in 1997  
8 and has continued training through the National Rifle Association (NRA) and the Sacramento  
9 Regional Public Safety Training Center. My primary focus has been on firearms, laws, self-  
10 defense, firearms safety and responsibility. In 2004 I was designated as a Subject Matter Expert  
11 in the use of force by the Department of Corrections.

12 4. During my career as a Correctional Officer, I received numerous letters of  
13 commendation and letters of appreciation, both pertaining to my primary duties as a Correctional  
14 Officer, but also as a firearms and use-of-force instructor, from officials, including State  
15 correctional officials and wardens.

16 5. As a law enforcement officer and professional trainer, I am well trained in the use  
17 of firearms. I have personally trained thousands of Peace Officers and private citizens in the  
18 proper use of handguns, rifles, shotguns, less-lethal options (pepper spray) and the use of force. I  
19 have received specialized training in tactical handguns, rifles and shotguns. I have continued to  
20 expand my knowledge base by attending firearms instructor courses ensuring that I am current  
21 and up-to-date on any new changes in his areas of expertise. I am qualified to provide superior  
22 training in all aspects of firearms training, self-defense, safety and gun care.

23 6. I currently have and maintain NRA certifications for: (1) Home Safety,  
24 Protection, Education and Responsibility; (2) Pistol and Rifle; (3) NRA Law Enforcement  
25 Handgun/Shotgun Instructor; and (4) Metallic Cartridge Reloading Instructor. In addition, I am  
26 or have been an instructor for the California Commission on Peace Officers Standards and  
27 Training (POST), and have further received training and certificates from:

- 28 • Glock (Glock Instructor's Workshop);



- 1 • Sacramento Regional Public Safety Training Center (Firearms/Rifle Instructor;  
2 Firearms Instructor Update);
- 3 • Armor Holdings, Inc. (Basic Instructor, Critical Response); and
- 4 • California Department of Corrections Correctional Training Center (Expandable  
5 Baton Instructor Certification; Use of Force Training; Chemical Agents, and First  
6 Aid).

7 7. I have been a firearms instructor for the Bureau of Security and Investigative  
8 Services (BSIS), and I maintain active memberships in the International Association of Law  
9 Enforcement Firearms Instructors (IALEFI) and have received a certificate in the Master  
10 Instructor Development Program with IALEFI. I have been a firearms instructor with the  
11 California Dept of Corrections, the Sacramento Gun Club, and numerous CCW programs.

12 8. I was born in Merced, California, and spent my latter years growing up in  
13 Houston, Texas. In 1980, when I was 19 years old, and living in Houston, I was arrested arising  
14 from an incident involving the alleged misuse of a credit card. In that case, someone had told me  
15 that I could use his credit card when, in fact, he did not have authorization to use it himself in the  
16 first place, and therefore, I had mistakenly used a credit card under false pretenses.

17 9. After being charged with credit card fraud, in 1980, I was made an offer by the  
18 prosecutor, in which he offered that the charges would be set aside and dismissed, following a  
19 period of probation, if I agreed to plead guilty to a single charge of “credit card abuse,” a third  
20 degree felony under Texas law, which involved no term of confinement. In light of the  
21 prosecutor’s offer by which these charges would be set aside and dismissed, I accepted this deal,  
22 pled guilty to the charge as offered, and completed a three-year term of probation under  
23 community supervision.

24 10. Having successfully completed the term of my community supervision probation,  
25 on or about August 22, 1983, the district court for the County of Harris, Texas, permitted me to  
26 withdraw my plea of guilty, set aside and dismiss the judgment of conviction. I was able to  
27 obtain a certified copy of this judgment. A true and correct certified copy of the Texas court’s  
28

1 FULL TERMINATION ORDER OF THE COURT DISMISSING THE CAUSE in the Texas case is attached  
2 hereto as **Jones Exhibit A**.

3 11. After this event, I moved to California and pursued my career in law enforcement  
4 with the State of California, as discussed in paragraph 3 above. I received and completed my  
5 training at the Richard A. McGee Correctional Training Center in 1984, and went to work for the  
6 Department of Corrections. I also have completed community college courses in firearms  
7 instruction, which I have continued to update every two years. Throughout my career in law  
8 enforcement, I legally and necessarily owned and possessed firearms, as a part of my profession,  
9 for personal protection, recreation and sport.

10 12. Since retiring honorably in 2014, I have chosen to pursue my career as a law  
11 enforcement firearms and use-of-force trainer, drawing upon my 30 years of training and  
12 experience in the field. To continue in this field and chosen profession, which I have dutifully  
13 and lawfully pursued and trained for, for over 30 years, I am required to own and possess  
14 firearms and handle both firearms and ammunition. In fact, at the current time, I am listed on the  
15 Department of Justice’s website as one of its Certified Instructors eligible to provide training  
16 specified by Pen. Code § 31635(b). A true and correct excerpt from the DOJ’s current list of  
17 instructors authorized to provide “Comparable Firearm Safety Training” in which I am listed is  
18 attached hereto as **Jones Exhibit B**.

19 13. I have previously had no problem obtaining and holding a Certificate of  
20 Eligibility (“COE”) to own/possess firearms and/or ammunition under Cal. Penal Code § 26710,  
21 a necessary requirement to becoming or maintaining status as a certified firearm instructor under  
22 current DOJ policy.

23 14. In 2018, I submitted my application for renewal of my COE, which I had held  
24 without incident since 2010. In or around February 2018, the DOJ informed me that the COE  
25 application was being delayed. I then initiated a record review request. On or about February  
26 23, 2019, the DOJ Bureau of Firearms informed me that according to the Department’s records, I  
27 was “not eligible to own, possess or have under [his] custody or control any firearm[,]” and  
28

1 denied me a Certificate of Eligibility. A true and correct copy of the DOJ’s letter of February 23,  
2 2019 is attached hereto as **Jones Exhibit C**.

3 15. I am informed and believe that the Department’s policies, practices, and customs  
4 are being used to deny the right of plaintiffs, and similarly situated individuals, to own/possess  
5 and purchase firearms, notwithstanding other state court judgments and proceedings that have  
6 specifically set aside, vacated or otherwise dismissed our felony convictions, and restored our  
7 firearm rights.

8 16. As a result of these policies, and the denial of my renewal of the COE, I am  
9 unable to pursue my chosen and long-pursued and trained-for career as a firearms instructor. I  
10 have had to discontinue all further firearms instruction, training and classes. I am thus being  
11 permanently deprived of my career and livelihood that I have literally been training for, for over  
12 30 years. Unless and until the Department, and the defendants’ implementation of these policies  
13 is restrained and enjoined, temporarily, preliminarily and permanently, I will continue to be  
14 deprived of my ability to make a living in this field. And furthermore, my inability to  
15 own/possess or even handle firearms or ammunition, resulting in my inability to be a firearms  
16 trainer, is causing severe injury to my professional reputation as a firearms instructor and trainer,  
17 within the law enforcement and civilian training communities. Defendants’ policies have also  
18 caused me severe and ongoing humiliation and embarrassment associated with being a  
19 “prohibited person,” even after 30 years of service in law enforcement.  
20

21 17. Also, as the Department now legally considers me to be a “prohibited person,” I  
22 am no longer able to legally defend myself with the use of a firearm. This is particularly  
23 problematic as a retired correctional officer, as I have had interactions and incidents involving  
24 some of the state’s most violent convicted criminals in prison. It was not unusual for me to be  
25 threatened by inmates while I was on duty, e.g., with statements like, “One day I’ll see you on  
26 the streets,” and the like.

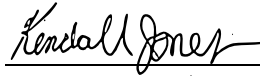
27 18. I am therefore continuing to be deprived of the ability to exercise my rights  
28 guaranteed by the Second Amendment here in California, through the defendants’ policies,

1 practices, and interpretation of law, which prohibit me from owning or possessing firearms. I  
2 have been and am continuing to be deprived of the ability to exercise a fundamental  
3 constitutional right to possess a firearm for lawful purposes, including for self-defense in the  
4 home. I desire to exercise, and would exercise these rights, but for the defendants' policies that  
5 prohibit me from doing so.

6 19. For these reasons, and as set forth in the motion, we respectfully request summary  
7 judgment in our favor on all claims.

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

9  
10 Dated: 06/18/2020



11 KENDALL JONES

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
**SEILER EPSTEIN LLP**  
Attorneys at Law

**JONES EXHIBIT A**

FULL TERMINATION ORDER OF THE COURT-DISSMISSING THE CAUSE

THE STATE OF TEXAS

VS. NO. 317020

KENDALL JONES

29/337

IN CRIMINAL DISTRICT COURT NO. 180  
OF HARRIS COUNTY, TEXAS

It appears to the Court, after considering the recommendation of the defendant's probation officer, and other matters and evidence to the effect that the defendant has satisfactorily fulfilled the conditions of probation during the full period of the original probationary period to which he was sentenced. Therefore the period of probation is terminated.

It is therefore the order of the Court that the defendant be and he is hereby permitted to withdraw his plea of guilty, the indictment against the defendant be and the same **is hereby dismissed and the Judgment of Conviction be hereby set aside as provided by law.**

Probation Officer: Clara D. Perez

Entered this 22nd day of August, A.D. 1983

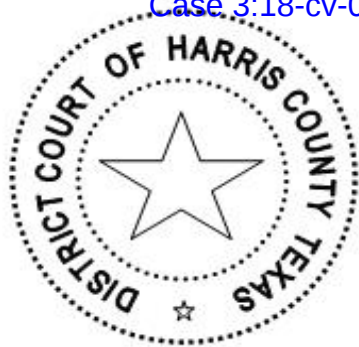
[Signature], Judge Presiding



05

476003 942 040 90a





I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this March 22, 2019

Certified Document Number: 79056150 Total Pages: 1

Marilyn Burgess, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

**In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)**

**JONES EXHIBIT B**

State of California Department of Justice



**XAVIER BECERRA**

*Attorney General*

HOME ABOUT MEDIA CAREERS REGULATIONS RESOURCES PROGRAMS CONTACT

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

Home / Firearms / Becoming A DOJ Certified Instructor And Maintaining Current ...

[...]

### 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:

[...]

Sacramento Gun Club

Kendall Jones Sacramento

[Excerpts from: <https://oag.ca.gov/firearms/fscinfo> as of 11/15/19]

**JONES EXHIBIT C**

**XAVIER BECERRA**  
*Attorney General*

*State of California*  
**DEPARTMENT OF JUSTICE**



BUREAU OF FIREARMS  
P.O. BOX 160487  
SACRAMENTO, CA 95816-0487  
Telephone: (916) 227-3751  
Fax: (916) 227-1032

February 23, 2019

KENDALL JONES  
[REDACTED]

RE : Certificate of Eligibility Denial Notice

Dear KENDALL JONES:

The California Department of Justice (the Department) has reviewed your application for a Certificate of Eligibility. Department records indicate you are not eligible to own, possess, or have under your custody or control any firearm. Therefore, your application for a Certificate of Eligibility is denied.

California law affords you the opportunity to obtain a copy of your records and to refute any erroneous or inaccurate information contained therein. (Pen. Code, §§ 11120 – 11127.) If you wish to obtain a copy of your record, you must complete a Firearms Record Review Request for Live Scan (BOF 8016RR). This form can be found on the Department's website at <https://oag.ca.gov/firearms/forms>.

If you have any questions, please email the Bureau of Firearms at [COE@doj.ca.gov](mailto:COE@doj.ca.gov).

Sincerely,

CERTIFICATE OF ELIGIBILITY UNIT  
Bureau of Firearms

For XAVIER BECERRA  
Attorney General

1 George M. Lee (SBN 172982)  
gml@seilerepstein.com

2 **SEILER EPSTEIN LLP**  
275 Battery Street, Suite 1600  
3 San Francisco, CA 94111  
Phone: (415) 979-0500  
4 Fax: (415) 979-0511

5 Attorneys for Plaintiffs  
6 CHAD LINTON, PAUL MCKINLEY STEWART,  
7 KENDALL JONES, FIREARMS POLICY FOUNDATION,  
8 FIREARMS POLICY COALITION,  
9 SECOND AMENDMENT FOUNDATION,  
10 THE CALGUNS FOUNDATION and MADISON  
11 SOCIETY FOUNDATION

12 **UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA**

14 CHAD LINTON, et al.,

15 Plaintiffs,

16 vs.

17 XAVIER BECERRA, in his official capacity as  
18 Attorney General of California, et al.,

19 Defendants.

Case No. 3:18-cv-07653-JD

**DECLARATION OF ADAM J. RICHARDS IN  
SUPPORT OF PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT, OR IN THE  
ALTERNATIVE, FOR PARTIAL SUMMARY  
JUDGMENT**

**[FRCP 56]**

Courtroom 11, 19<sup>th</sup> Floor  
Judge: Hon. James Donato

22 DECLARATION OF ADAM J. RICHARDS

23 I, Adam J. Richards, declare as follows:

24 1. I am an attorney at law, in good standing, duly licensed to practice law in this  
25 State. I have personal knowledge of the facts stated herein, and if called as a witness, I could  
26 competently testify to these facts.

27 2. This declaration is made in support of the plaintiffs' motion for summary  
28 judgment.



SEILER EPSTEIN LLP  
Attorneys at Law

1 judgment, or in the alternative, for partial summary judgment.

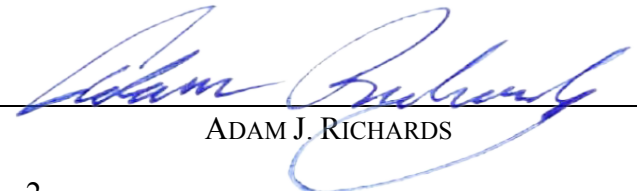
2 3. My law practice specializes in criminal defense, and all other manner of firearms  
3 laws in the State of California. I represented plaintiff Chad Linton with respect to the Department  
4 of Justice’s denial of his right to own or possess firearms.

5 4. Beginning on February 2, 2017, I began communicating with the California  
6 Department of Justice (DOJ) to contest their determination regarding Mr. Linton’s status as a  
7 person prohibited from owning firearms. Along with this letter, I provided the DOJ with copies  
8 of the Washington Court’s Order vacating Mr. Linton’s felony conviction, as well as the  
9 Washington Order restoring his firearm rights. A true and correct copy of my letter to the DOJ  
10 dated February 2, 2017, is attached hereto as **Richards Exhibit A**. The DOJ did not respond to  
11 me regarding this request.

12 5. On September 24, 2018, I spoke with Deputy Attorney General Robert Wilson  
13 regarding my client’s continuing prohibition. During this conversation, Mr. Wilson informed me  
14 that he had reviewed Mr. Linton’s records in question, and that the Department’s position was  
15 that they would not honor the out of state order that vacated or dismissed Mr. Linton’s case.  
16 During this conversation, Mr. Wilson stated that this was routinely how the Department handled  
17 out-of-state felony convictions that have been set aside or vacated. I asked him what remedy Mr.  
18 Linton had available to him to restore his firearm rights, to which Mr. Wilson replied that the  
19 only measure that would restore Mr. Linton’s rights in the State of California was a “presidential  
20 pardon.” When I argued that there was no conviction for which Mr. Linton could be pardoned  
21 given the formal dismissal and vacation of the Washington legal action by a court in that  
22 jurisdiction, Mr. Wilson had no response to that assertion. A true and correct copy of my letter of  
23 December 4, 2018 to Deputy Attorney General Wilson, confirming our conversation, is attached  
24 hereto as **Richards Exhibit B**.

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

26  
27  
28 Dated: June 18, 2020

  
ADAM J. RICHARDS

**RICHARDS EXHIBIT A**

LAW OFFICES OF

ROTHSCHILD WISHEK & SANDS LLP  
765 UNIVERSITY AVENUE  
SACRAMENTO, CALIFORNIA 95825

TELEPHONE (916) 444-9845  
FACSIMILE (916) 640-0027

M. BRADLEY WISHEK  
SHANNON V. BAKER  
CLYDE M. BLACKMON  
ADAM J. RICHARDS  
ERIN L. BRENNAN  
AMIT SINGH

*Of Counsel*  
MICHAEL ROTHSCHILD  
QUIN DENVIR (1940-2016)  
KENDALL DAWSON WASLEY

*Retired*  
MICHAEL S. SANDS

February 2, 2017

**VIA U.S. MAIL**

State of California Department of Justice  
Bureau of Criminal Information and Analysis  
Record Review Unit  
P.O. Box 903417  
Sacramento, CA 94203-4170

Re: Chad Linton  
Claim of Alleged Inaccuracy or Incompleteness



To Whom It May Concern:

This office represents Chad Linton. We are in receipt of the letter from your office to Mr. Linton dated November 10, 2016. We are also in receipt of a letter from the Firearms Clearance Section dated November 7, 2016 informing Mr. Linton that his application to purchase a firearm has been denied due to a felony conviction. Please consider this letter as a claim of inaccuracy or incompleteness. The basis for this claim is that the DOJ appears to attribute a felony offense to Mr. Linton from the State of Washington. This offense was vacated by the Superior Court of Washington, County of Island and his right to own firearms was expressly restored by the court. I have enclosed two documents for the Department's review, both of which are stamped, certified copies of the relevant court record. The documents provide the following:

1. Document 1: Order on Motion Re: Vacating Record of Felony Conviction Granted.
  - a. This document provides, among other things, the following:
    - i. The defendant's guilty plea for the offense listed in paragraph 3.1 is withdrawn and a not guilty plea is entered.
    - ii. The guilty verdict for the offense listed in paragraph 3.1 is set aside.
    - iii. The defendant shall be released from all penalties and disabilities resulting from the offense listed in paragraph 3.1 and the conviction of that offense shall not be included in the defendant's criminal history for the purposes of determining a sentence in any subsequent conviction. However, the conviction may be used in a later criminal prosecution.
    - iv. For all purposes, including responding to questions on employment applications, the defendant may state that he or she has never been convicted of the offense listed in paragraph 3.1.
2. Document 2: Order Restoring Right to Possess Firearms.
  - a. This document provides, in summary, that the rights lost by defendant in the case number at issue are thereby restored and defendant is qualified, pursuant to

Record Review Unit  
Re: Claim of Alleged Inaccuracy or Incompleteness  
February 2, 2017  
Page 2

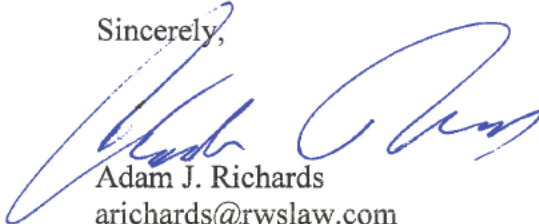
Washington law, to have the right to possess firearms fully restored. The court then orders that his rights are restored.

The enclosed court records unequivocally demonstrate that Mr. Linton's right to own and possess firearms was fully restored and that the offense which originally caused him to lose his rights, was fully vacated.

Based on the foregoing, please correct your record concerning Mr. Linton such that it reflects that he has not been convicted of a felony and that he is able to own and possess firearms.

Please contact me or Mr. Linton should you have any questions or concerns or should you disagree with this request and the information contained herein.

Sincerely,



Adam J. Richards  
[arichards@rwslaw.com](mailto:arichards@rwslaw.com)

AJR/clu

Enclosure: Claim of Alleged Inaccuracy or Incompleteness

cc: Chad Linton

**RICHARDS EXHIBIT B**

LAW OFFICE OF  
**ADAM J. RICHARDS**

2530 J Street, Ste. 320  
Sacramento, California 95816

TELEPHONE (916) 399-3486

FACSIMILE (916) 823-3307

December 4, 2018

**SENT BY U.S. MAIL AND EMAIL TO Robert.Wilson@doj.ca.gov**

Deputy Attorney General Robert D. Wilson  
Office of the Attorney General  
California Bureau of Firearms  
1300 I St, Ste 125  
Sacramento, CA 95814

Re: DEPARTMENT DENIAL OF RIGHT TO PURCHASE A FIREARM --  
CHAD LINTON

Dear Mr. Wilson:

Thank you for speaking with me on Tuesday, September 24, 2018 about my client, Chad Linton. Based on our conversation, it is my understanding that the Department's position is that Mr. Linton is prohibited from owning or possessing firearms in the State of California pursuant to Penal Code section 29800 as a result of his vacated and dismissed 1988 felony conviction in the State of Washington. During our call, you stated that the only measure that would restore his rights, according to your Department, is a presidential pardon. As I informed you during our conversation, I strongly disagree with the Department's position as I believe it to be arbitrary and capricious for several reasons. As evidenced by the Washington State court records, certified copies of which were provided to your department, Mr. Linton's conviction was vacated and dismissed. The unequivocal language in the Washington State Superior Court order states, among other things, that 1) the information/indictment against him was dismissed, 2) that he shall be released from all penalties and disabilities resulting from the offense, 3) that the conviction was vacated, and 4) that for all purposes, defendant may state that he was never convicted of the offense. While this order in and of itself restores his right to own and possess firearms in all jurisdictions, including federally pursuant to 18 USC 921(a)(20)(B), Mr. Linton also received an express order from the Washington Superior Court restoring his right to own and possess firearms, a certified copy of which was also provided to your office. Your position that Washington orders have no authority over California is irrelevant and misses the crux of the issue; Washington courts are not seeking to modify a California order or case. Instead, the question of whether Mr. Linton was convicted of a felony resides with the jurisdiction in which the conviction allegedly occurred. Mr. Linton has no record in the State of California and now, effectively, has no record in the State of Washington.



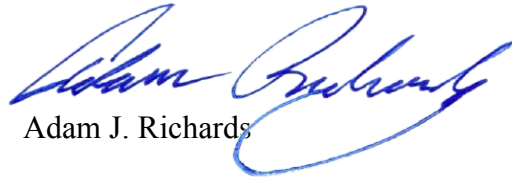
Deputy Attorney General Robert Wilson  
Re: Linton, Chad  
12/4/2018  
Page 2

The Department's position that Mr. Linton is still prohibited is spurious and deprives him of the free exercise of a fundamental right and equal protection under the law. The Department's current position is especially troubling given that the Department informed Mr. Linton in response to his Personal Firearms Eligibility Check (hereafter, "PFEC") that he was eligible to own and possess firearms in August of this year, 2018. Yet, he was denied the ability to purchase a firearm shortly thereafter. While, you made clear during our call that the PFEC only checks California law and records, Mr. Linton has no California record and he is not federally prohibited or prohibited in the state of Washington. Yet, California still maintains that he is prohibited as a result of his 1988 conviction for attempting to elude a pursuing police vehicle which has since been vacated and dismissed; His rights, including with respect to firearms were fully restored.

It seems that Mr. Linton has exhausted his remedies with the Department and, as you informed me during our call, the Department will not change its position with regard to its view of Mr. Linton's record and that he is currently prohibited from owning or possessing a firearm. Please confirm in writing within ten (10) days of this letter the Department's position that it will not change their policy as it pertains to the facts of this case nor issue to Mr. Linton written clearance to purchase a firearm.

Thank you for your attention to this matter.

Sincerely,



Adam J. Richards

1 George M. Lee (SBN 172982)  
gml@seilerepstein.com

2 **SEILER EPSTEIN LLP**  
275 Battery Street, Suite 1600  
3 San Francisco, CA 94111  
Phone: (415) 979-0500  
4 Fax: (415) 979-0511

5 Attorneys for Plaintiffs  
6 CHAD LINTON, PAUL MCKINLEY STEWART,  
7 KENDALL JONES, FIREARMS POLICY FOUNDATION,  
8 FIREARMS POLICY COALITION,  
9 SECOND AMENDMENT FOUNDATION,  
10 THE CALGUNS FOUNDATION and MADISON  
11 SOCIETY FOUNDATION

12 **UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA**

14 CHAD LINTON, et al.,

15 Plaintiffs,

16 vs.

17 XAVIER BECERRA, in his official capacity as  
18 Attorney General of California, et al.,

19 Defendants.

Case No. 3:18-cv-07653-JD

**DECLARATION OF GEORGE M. LEE IN  
SUPPORT OF PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT, OR IN THE  
ALTERNATIVE, FOR PARTIAL SUMMARY  
JUDGMENT**

**[FRCP 56]**

Courtroom 11, 19<sup>th</sup> Floor  
Judge: Hon. James Donato

20  
21  
22 DECLARATION OF GEORGE M. LEE

23 I, George M. Lee, declare as follows:

24 1. I am an attorney at law, in good standing, duly licensed to practice law in this  
25 State. I am admitted to the Northern District of California. I counsel of record for plaintiffs Chad  
26 Linton et al. in the above matter. I have personal knowledge of the facts stated herein, and if  
27 called as a witness, I could competently testify to these facts.  
28

1           2.       This declaration is made in support of the plaintiffs’ motion for summary  
2 judgment, or in the alternative, for partial summary judgment, and to authenticate the exhibits  
3 referenced therein.

4           3.       True and correct excerpts from the deposition of Gilbert M. Matsumoto, who was  
5 produced by the California Department of Justice pursuant to FRCP 30(b)(6) on June 5, 2020, as  
6 referenced in plaintiffs’ motion, are attached hereto as **Lee Exhibit A**.

7           4.       A true and correct copy of Defendants’ Responses to Plaintiffs’ First Set of  
8 Requests for Admissions, Set One, dated and served on January 13, 2020, is attached hereto as  
9 **Lee Exhibit B**.

10          5.       A true and correct copy of the document marked in this litigation and referenced  
11 at the deposition of Mr. Matsumoto as Exhibit 005 is attached hereto as **Lee Exhibit C**.

12          6.       A true and correct copy of the document marked in this litigation and referenced  
13 at the deposition of Mr. Matsumoto as Exhibit 006 is attached hereto as **Lee Exhibit D**.

14          7.       A true and correct copy of a document constituting plaintiff Chad Linton’s  
15 criminal history records from the State of Washington, produced by the defendants in this  
16 litigation as AGO\_LINTON\_014-016, is attached hereto as **Lee Exhibit E**. This document was  
17 taken from the larger set of documents marked as Exhibit 011 at Mr. Matsumoto’s deposition.

18          8.       A true and correct copy of a document taken from plaintiff Paul McKinley  
19 Stewart’s criminal history and firearm purchase denial records, produced by the defendants in  
20 this litigation as AGO\_LINTON\_068, is attached hereto as **Lee Exhibit F**. This document was  
21 taken from the larger set of documents marked as Exhibit 014 at Mr. Matsumoto’s deposition.

22          9.       A true and correct copy of the document marked in this litigation and referenced  
23 at the deposition of Mr. Matsumoto as Exhibit 016 is attached hereto as **Lee Exhibit G**.

24          10.       A true and correct copy of an email produced by the defendants in this litigation  
25 on June 5, 2020, and labeled AGO\_LINTON\_160-161 is attached hereto as **Lee Exhibit H**.

26          11.       A true and correct copy of an email produced by the defendants in this litigation  
27 on June 5, 2020, and labeled AGO\_LINTON\_162 is attached hereto as **Lee Exhibit I**.

28          12.       A true and correct copy of a document entitled “Arizona Terminology Page”


1 produced in this litigation by the defense on June 5, 2020, and labeled AGO\_LINTON\_214-217  
2 is attached hereto as **Lee Exhibit J**. These pages were taken from the larger set of documents  
3 marked as Exhibit 017 at Mr. Matsumoto’s deposition.

4 13. A true and correct copy of a document entitled “Texas Terminology Page”  
5 produced in this litigation by the defense on June 5, 2020, and labeled AGO\_LINTON\_227-232  
6 is attached hereto as **Lee Exhibit K**. These pages were taken from the larger set of documents  
7 marked as Exhibit 017 at Mr. Matsumoto’s deposition.

8 14. A true and correct copy of a document entitled “Washington Terminology Page”  
9 produced in this litigation by the defense on June 5, 2020, and labeled AGO\_LINTON\_251-255  
10 is attached hereto as **Lee Exhibit L**. These pages were taken from the larger set of documents  
11 marked as Exhibit 017 at Mr. Matsumoto’s deposition.

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

13  
14 Dated: June 22, 2020

  
\_\_\_\_\_  
GEORGE M. LEE

SEILER EPSTEIN LLP  
Attorneys at Law

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**LEE EXHIBIT A**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CHAD LINTON, et al.,	)
	)
Plaintiffs,	)
	)
vs.	)Case No.
	)3:18-cv-07653-JD
XAVIER BECERRA, in his	)
official capacity as Attorney	)
General of California, et al.,	)
	)
Defendants.	)
-----	)

VIDEOCONFERENCE DEPOSITION OF GILBERT M. MATSUMOTO  
Friday, June 5, 2020  
Volume I

Reported by:  
CARLA SOARES  
CSR No. 5908  
Job No. 4083222  
Pages 1 - 119

1 Q So Mr. Matsumoto, you understand you've been  
2 designated as the person to testify as to certain  
3 categories.

4 Do you understand that?

5 A Yes, I do.

6 Q And you are here on behalf of the Department  
7 of Justice to testify as to each of the ten categories  
8 that are listed in the subjects of testimony?

9 A Yes.

10 Q Okay. Now, we'll get more specific as we go,  
11 but what have you generally done to educate yourself as  
12 to each of these ten categories in a general sense?

13 A I reviewed the case -- I reviewed the three  
14 cases, Linton, Stewart, and Jones, and did my own  
15 research on them.

16 Q Okay. Did you -- in order to be assured that  
17 you are the person most qualified, did you -- what  
18 documents did you review?

19 A The documents that Maureen Onyeagbako provided  
20 me. She provided me a binder with forms, exhibits. So  
21 I reviewed them.

22 Q Okay.

23 MS. ONYEAGBAKO: We provided the -- we  
24 provided Mr. Matsumoto with copies of the complaint,  
25 answer, discovery responses, and the documents that were



1 Q Were you actually qualified to testify as an  
2 expert witness or --

3 A Yes.

4 Q Okay. In what subjects were you qualified as  
5 an expert?

6 A How to determine eligibility -- eligibility  
7 status of a person trying to own or possess a firearm in  
8 the state of California.

9 Q All right. Any other subjects that you were  
10 qualified to testify as an expert in?

11 A Just the background process.

12 Q Okay. So let's start with the issues that  
13 you're here to testify about pursuant to the deposition  
14 notice. And again, Exhibit 6, 006, is the deposition  
15 notice that sets forth all the categories.

16 So Category No. 1 has you testifying --

17 MS. ONYEAGBAKO: Can you put that back up in  
18 front of us, if you wouldn't mind?

19 MR. LEE: Okay.

20 Q Category 1 has you testifying as the person  
21 qualified to testify regarding the Department's policy  
22 or policies in denying out-of-state former felons the  
23 ability to purchase and/or possess firearms in the state  
24 of California when those felony convictions have been  
25 set aside or vacated in their respective states of

1 origin.

2 Are you prepared to testify to that category  
3 today?

4 A Yes.

5 Q So firstly, is there a written policy that is  
6 described in this Category 1, which is a policy  
7 regarding the denial of out-of-state former felons whose  
8 felony convictions have been set aside or vacated in  
9 their respective states of origin?

10 A We just -- we just follow the penal codes or  
11 the welfare institution codes, health and safety codes.

12 Q Do I understand from your answer, does that  
13 mean no, there is no actual written policy that  
14 specifically pertains to this subject?

15 A No.

16 Q So just so it's clear, no, there is no written  
17 policy?

18 A No, there is no written policy.

19 Q Okay. And have you undertaken efforts to look  
20 for a written policy?

21 A No, I have not.

22 Q Is there an unwritten policy that you're aware  
23 of that pertains to the subject that we've talked about?

24 A Not that I know of.

25 MR. LEE: So I'm going to pull up and refer to

1 Exhibit -- what we've previously marked in this case as  
2 Exhibit 5, 005.

3 (Exhibit 5 was marked for identification  
4 and is attached hereto.)

5 BY MR. LEE:

6 Q And let's see if -- can you see Exhibit 5 on  
7 the screen?

8 A Yes.

9 Q At the bottom, we have it indicated on the  
10 footer as Exhibit 005. Are you able to see that?

11 A Yes, I can.

12 Q Okay. So this is a document that is entitled  
13 "Background Clearance Unit DROS Procedures."

14 Do you see that?

15 A Yes, I do.

16 Q Okay. What is this document? And feel free,  
17 by the way, to -- if you're able to pull Exhibit 5 up,  
18 feel free to peruse the whole thing.

19 What is Exhibit 5?

20 MS. ONYEAGBAKO: Give us just a moment,  
21 please, Counsel. I'm pulling up for us the written --  
22 the paper copy.

23 Can you just show us where Exhibit 5 ends,  
24 just so I'm sure?

25 MR. LEE: Well, it ends at page 94,

1 AGO LINTON 094.

2 MS. ONYEAGBAKO: Okay. You can take time to  
3 review it.

4 I've given him the hard copy.

5 MR. LEE: Okay. He has the hard copy in front  
6 of him?

7 THE WITNESS: Yes, I do.

8 BY MR. LEE:

9 Q Can you tell us what Exhibit 5 is or what this  
10 document is?

11 A This document is used to determine a basic  
12 firearms eligibility check.

13 The first page you're looking at is the  
14 different databases we search to see if the subject has  
15 any criminal history.

16 Q Okay. And this is for purposes of determining  
17 a person's eligibility to own or possess firearms in  
18 California?

19 A That is correct.

20 Q Is this document part of a larger document,  
21 either in a binder or something else that's part of a  
22 larger set of policies or procedures?

23 A No.

24 MS. ONYEAGBAKO: Objection. Lack of  
25 foundation.

1 BY MR. LEE:

2 Q Okay. Let me ask it this way, just more  
3 basically then: Is this document, Exhibit 5, part of a  
4 larger collection of documents that you might find in a  
5 binder?

6 A Yes.

7 Q What is the larger document that this comes  
8 from?

9 A It's our training binder.

10 Q And who prepares -- who prepared this  
11 particular document?

12 A It's reviewed first by staff, and it's  
13 verified by the supervisor. And then it goes to our  
14 attorneys, and they review it to make sure everything is  
15 okay. Then it comes back to the dealer's record of sale  
16 unit, and then we train.

17 Q Okay. And it's -- you mentioned it's prepared  
18 by the supervisor. The supervisor of what unit?

19 A The background clearance unit.

20 Q What is the background clearance unit?

21 A It's the -- the background clearance unit is  
22 the unit that processes the dealer's record of sale.

23 Q All right. And dealer record of sale, we also  
24 call it DROS; is that correct?

25 A That is correct.

1 Are you specifically asking me just for DROS only or all  
2 firearms transactions?

3 Q I'm asking you what DROS is at the moment.

4 A Oh, DROS? Just one system.

5 Q And what does that system pertain to?

6 A Consolidated firearms information system.  
7 CFIS.

8 Q Okay. So you're saying DROS consists of CFIS  
9 or --

10 A That's the database that is being used to  
11 process the dealer's record of sale.

12 Q Okay. So when a DROS transaction is  
13 initiated, it accesses the CFIS database in order to  
14 determine initial background eligibility; is that --

15 A Yes.

16 Q Okay. And this is a system that is -- the  
17 DROS system is a system that's administered by the  
18 California Department of Justice; is that correct?

19 A That's correct.

20 Q And the background check itself is also  
21 administered by the Department of Justice?

22 A Using the system, the DROS system, yes.

23 Q Okay. And to your knowledge, is that -- is  
24 that function delegable to a local law enforcement  
25 agency?

1           A    The DROS system?   No.   It's only -- Department  
2   of Justice only.

3           Q    Okay.  Now, this document, which is  
4   Exhibit 005, you've indicated it's a training document?

5           A    Yes.

6           Q    Is it -- training of who?

7           A    New -- new employees to the firearms -- Bureau  
8   of Firearms.

9           Q    Bureau of Firearms is a division within the  
10   Department of Justice?

11          A    Yes.

12          Q    And what employees specifically would be  
13   trained with this document, which is Exhibit 005?

14          A    Employees that are hired or -- in the dealer's  
15   record of sale section.

16          Q    Would those employees have a title, like  
17   analyst or --

18          A    Criminal identification specialist 2.

19          Q    And what would a criminal identification  
20   specialist 2 do?

21          A    In the DROS unit?

22          Q    Yes.

23          A    Determine eligibility of the person applying  
24   to own or possess a firearm in California.

25          Q    Okay.  And this document, Exhibit 005, would



1 prohibitive as far as a firearm right is concerned. But  
2 what does this particularly mean when it says, "The laws  
3 of that particular state where the conviction occurred  
4 apply"?

5 A An out-of-state agency. An example would be  
6 Nevada, Arizona, New York, New Jersey. It has to be a  
7 territory within the United States.

8 Q Right. But I guess what I'm looking at is --  
9 from your answer -- is what does it mean as far as when  
10 it says that "The laws of that state where the  
11 conviction occurred apply"?

12 Does that mean that -- if what you're saying  
13 is that the law of that particular state doesn't matter  
14 as far as the prohibition is concerned, does this -- is  
15 that somewhat at odds with what this document says?

16 MS. ONYEAGBAKO: Objection. Asked and  
17 answered.

18 BY MR. LEE:

19 Q You can answer.

20 MS. ONYEAGBAKO: Do you know?

21 THE WITNESS: It's -- it's based -- on that  
22 particular other state, we're basing it on Penal Code  
23 29800, where if you're convicted in another state of a  
24 felony, you will be prohibited in California unless you  
25 have a governor's pardon that restores your firearm

1 rights.

2 BY MR. LEE:

3 Q Okay. Then what is the purpose of this  
4 statement that "The laws of that particular state where  
5 the conviction occurred apply"? Is that not a true  
6 statement then?

7 MS. ONYEAGBAKO: Objection. Repetitive, asked  
8 and answered, and lacks foundation.

9 BY MR. LEE:

10 Q You can answer.

11 A Oh, okay. Sorry. Can you rephrase that  
12 question again? Sorry.

13 Q Yes.

14 So does that mean that this particular  
15 statement doesn't really apply? When this document says  
16 that "The laws of that particular state where the  
17 conviction occurred apply," and you're saying that  
18 without a gubernatorial pardon from that state that the  
19 person is still prohibited pursuant to the California  
20 penal code, does that render this statement meaningless?

21 MS. ONYEAGBAKO: Objection. Calls for a legal  
22 conclusion, lacks foundation, asked and answered.

23 THE WITNESS: Regarding that statement, like I  
24 said, these procedures are being revised because there  
25 was renumbering of some of the penal codes so that

1           We have a binder with the federal laws of all  
2 the -- not the federal laws. We call it the FBI binder,  
3 the federal binder, that has, like, terminology of the  
4 state or restoration rights of another state or a  
5 set-aside.

6           We would have to review them before we could  
7 make our decision.

8 BY MR. LEE:

9           Q    Okay. Help me understand this then: This  
10 document, Exhibit 5, says "The laws of that particular  
11 state where the conviction occurred apply."

12           Are you saying that that is not the current  
13 DOJ policy?

14           A    We don't have a policy. We follow the penal  
15 codes.

16           Q    But are you saying that "The laws of the  
17 particular state where the conviction occurred apply" is  
18 not the case, that that is not what the DOJ's -- the DOJ  
19 does not -- strike.

20           Let me ask it this way: Are you saying that  
21 the laws of the particular state where the conviction  
22 occurred does not apply?

23           A    No, I didn't say that. Where the laws of that  
24 state, say Arizona -- we do our research. We do our due  
25 diligence to check.

1           Example: An individual arrested for a felony,  
2 we would contact that state to see if it was reduced, to  
3 see if it was reduced to a misdemeanor or if there's  
4 anything -- any other disposition that might appear on  
5 their -- his criminal history record from that state.

6           Like, if we saw a set-aside, we would look it  
7 up in the terminology page for that state, and then we  
8 would see what the terminology page requires us to do.  
9 Then we would look into the restoration of rights. Then  
10 we would make our determination.

11           Q But I guess I'm just not understanding what  
12 you mean, then, when -- or what the Department means  
13 when -- when it trains its individuals that the laws of  
14 the particular state where the conviction occurred  
15 apply.

16           You're saying -- maybe -- is your testimony  
17 that that is not an absolute rule, that that's -- that  
18 California does its own determination?

19           A No. No. We do our due diligence. We would  
20 treat anybody, regardless if they're applying in  
21 California or Arizona, the same.

22           We do our due diligence in determining if  
23 they're eligible. We check to see if it was reduced to  
24 a misdemeanor. We check to see if he has his civil  
25 rights restored. We check set-aside. We check all that

1 because we treat out-of-state individuals just like  
2 California individuals. Same way. It doesn't change.

3 Q Can you tell me the process that an analyst or  
4 the DOJ employee goes through to review the laws of that  
5 particular state where the conviction occurred to  
6 determine how it applies?

7 A The process would be, first we would do his  
8 background. And if there's a conviction that appears in  
9 that state, we would do our research. We would contact  
10 the state first to see if it was reduced. Or if there's  
11 no disposition, we would contact that state to determine  
12 if there was a conviction or not.

13 Then we -- if there was, we would determine if  
14 it's an offense that can be reduced to a misdemeanor.  
15 Then if there's no other information that's on the FBI  
16 record, we would make our determination.

17 So if I saw a misdemeanor on that record, I  
18 would approve them.

19 Q Do you -- so as part of your job -- ordinary  
20 job duties when you're not testifying, do you actually  
21 participate in the approval or denial process?

22 A Yes.

23 Q Are you a supervisor?

24 A Yes, I am.

25 Q So you look to see whether or not it -- so if

1 MR. LEE: Yes. I apologize.

2 Q So understanding there may be some other  
3 disqualifying misdemeanors, such as a misdemeanor crime  
4 of domestic violence, for example, but putting aside  
5 those specific prohibiting misdemeanors, generally  
6 speaking, if a felony -- a garden variety felony --  
7 let's say a burglary -- is reduced to a misdemeanor in  
8 another state, you're saying generally that that would  
9 not be disqualifying for firearms ownership?

10 MS. ONYEAGBAKO: Objection. Lacks foundation,  
11 misstates the witness's testimony.

12 THE WITNESS: If it was reduced to a  
13 misdemeanor, and it doesn't have any type of subsequent  
14 action, like a set-aside or civil rights restored, yes.

15 BY MR. LEE:

16 Q What is -- why would a set-aside of a  
17 misdemeanor be disqualified?

18 A It depends on the terminology of that state.  
19 Sometimes a set-aside does not restore firearm rights.

20 Q Why would a restoration of rights in a state  
21 be disqualifying in California?

22 A Because 29800, a felony conviction in another  
23 state would need a presidential pardon, and it must  
24 state "firearm rights restored." And restoration of  
25 rights in California -- California is one of the states

1 that doesn't honor restoration of rights given by other  
2 states.

3 Q Right. But what I think I'm trying to  
4 understand is, generally speaking, you look to the laws  
5 of another state, and you look at the court records of  
6 another state, right?

7 A Yes.

8 Q If necessary.

9 And if it shows, for example, that in another  
10 state, a felony conviction was subsequently reduced to a  
11 misdemeanor and then disposed of that way, is that  
12 person generally qualified to own firearms in  
13 California?

14 MS. ONYEAGBAKO: Objection. Lacks foundation,  
15 irrelevant.

16 THE WITNESS: It depends if the offense is  
17 reduceable.

18 BY MR. LEE:

19 Q Well, if it's reduced to a misdemeanor, let's  
20 assume that it's reduceable. I'm giving you the  
21 situation where it actually was reduced to a misdemeanor  
22 by a court in another state.

23 MS. ONYEAGBAKO: Objection. Relevance. This  
24 case does not involve misdemeanors.

25 MR. LEE: It does, and relevance is not a



1 proper objection.

2 MS. ONYEAGBAKO: Objection. Also lacks  
3 foundation.

4 You can answer.

5 MR. LEE: Madam Reporter, can you read the  
6 question back, please?

7 (Record read as follows:

8 "Question: Well, if it's reduced to a  
9 misdemeanor, let's assume that it's reduceable.  
10 I'm giving you the situation where it actually was  
11 reduced to a misdemeanor by a court in another  
12 state.")

13 MS. ONYEAGBAKO: Same objections.

14 BY MR. LEE:

15 Q In that situation, it was reduced to a  
16 misdemeanor so therefore it is reduceable. So is that  
17 person disqualified from owning firearms in California?

18 A No.

19 Q Okay. That's -- I think I'm just trying to  
20 establish that baseline understanding.

21 So that's how you would look at the laws of  
22 another state; is that what you're saying?

23 A Yes.

24 Q But whether or not the other state actually  
25 set aside the conviction or dismissed the felony

1 conviction or dismissed the case, that doesn't matter  
2 for purposes of California if it was a felony  
3 conviction; is that correct?

4 A That is correct.

5 Q The analyst that's applying the training  
6 that's set forth in this particular document, are they  
7 supposed to -- what sources are they supposed to consult  
8 with to determine whether the laws of any particular  
9 state apply?

10 A Our national instant gun check system federal  
11 binder.

12 Q Okay. So that's a binder that's kept at the  
13 DOJ, and you refer to it as the federal binder or the  
14 FBI binder?

15 A Federal binder.

16 Q Federal binder. Okay.

17 What does the federal binder consist of?

18 A The laws, some of the offenses, domestic --  
19 what could be considered domestic violence, state  
20 prohibitors, terminology pages, restoration of rights  
21 pages. That's about it that I can think of right now.

22 Q All right. I think you did produce some of  
23 those pages last night, which are contained in  
24 Exhibit 17. But we'll return to that issue later.

25 For now, I'd like to stick with Exhibit 005.

1 If you could turn to page 082 of that document if you  
2 have it in front of you.

3 A Yes, I do.

4 Q Okay. So where it says "Pardons," at the very  
5 top it says, "Pardons/Civil Liability Relief - Other  
6 States."

7 Do you see that?

8 A Yes, I do.

9 Q The first paragraph says that "A person  
10 convicted of a felony in another state who has a  
11 governor's pardon from that state is prohibited from  
12 possessing a firearm in California, unless the pardon  
13 expressly restores the right to receive and possess  
14 firearms. Rights are not restored if the conviction  
15 involved the use of a dangerous weapon."

16 Do you see that?

17 A Yes, I do.

18 Q So is that a policy of the Department of  
19 Justice?

20 A No, it's just an opinion.

21 Q Well, it's an opinion that gets applied,  
22 right?

23 A Yes.

24 Q And hopefully it gets applied consistently?

25 A Yes, it does.

1 Q And it gets applied uniformly to anyone who  
2 falls within the -- that situation, right?

3 A Correct.

4 Q And the Department strives to apply that  
5 opinion evenly?

6 A Evenly to everybody. Treat everybody the  
7 same.

8 Q Right. And to minimize any exceptions to  
9 that?

10 A Correct.

11 Q So is that not a policy?

12 MS. ONYEAGBAKO: Objection. Asked and  
13 answered.

14 THE WITNESS: No. No.

15 BY MR. LEE:

16 Q And help me understand why that is not a  
17 policy.

18 A Because when we do background checks,  
19 everything is either based on penal codes or federal  
20 codes. When we do background checks, it's penal codes  
21 or federal codes. That's it.

22 Basically this form is just like a reference,  
23 for reference, if they run into certain situations.  
24 That's why we tell them if they're not sure, consult  
25 your supervisor.

1 Q Right. It's a -- it's an item of reference  
2 that needs to be applied to everybody in the situation,  
3 right?

4 A Correct.

5 Q And analysts who are applying it aren't  
6 generally allowed to deviate from that, right?

7 A No.

8 Q So again, that doesn't indicate to you that  
9 that's a policy?

10 MS. ONYEAGBAKO: Objection. Asked and  
11 answered.

12 THE WITNESS: No.

13 BY MR. LEE:

14 Q And that's because -- and the basis for your  
15 answer is because there's a penal code that overrides --

16 A No, I didn't say there was a penal code that  
17 overrides. I said we -- when we do the background  
18 check, we follow certain penal codes, health and safety  
19 codes, welfare institution codes, or based on federal  
20 codes.

21 Q Okay. And I'm asking you all this because, A,  
22 I think we need to establish whether it's a policy or  
23 not, but also, I need to be able to understand how to  
24 refer to this.

25 I mean -- okay. So you're saying it's a point

1 of reference. If I referred to it as a guideline, is  
2 that fair?

3 A That's fair.

4 Q Okay. So this is a guideline that a person  
5 convicted of a felony is prohibited from possessing a  
6 firearm in California unless the pardon restores the  
7 right to receive and possess firearms.

8 It makes reference to an Attachment 4.

9 Do you see that in the document?

10 A Yes.

11 Q What is Attachment 4?

12 A Excuse me. Okay. I see Attachment 4.

13 Q Okay. And it starts at page -- I think it  
14 starts at page 086.

15 A Yes, it does.

16 Q So is this the way that this document actually  
17 appears in the training materials?

18 A Yes, it does.

19 Q Okay. And so there's no subsequent pages to  
20 this; is that --

21 A No.

22 Q I mean, exactly how it looks is how it  
23 appears?

24 A Yes, it does.

25 Q Okay. So -- and this Attachment 4 is -- looks

1 A Yes.

2 Q And as far as you're aware, is there any  
3 updated Attorney General opinion that pertains to  
4 pardons from governors from other states that refers to  
5 the right to possess a firearm instead of a privilege?

6 A Just what was in our federal binder under  
7 pardons and restorations.

8 Q All right. But this Exhibit 005 doesn't  
9 reference that, does it?

10 A No.

11 Q And there are portions of this document,  
12 Attachment 4, which is at page 086, that are crossed  
13 out.

14 Do you see that?

15 A Yes, I do.

16 Q Do you know why those portions are crossed  
17 out?

18 A I'm not aware. I wasn't around in '83, so I'm  
19 not aware.

20 Q Understood.

21 So again, returning to page -- I believe it  
22 was 082, in the next paragraph, it says, "A person  
23 convicted of a felony in another state whose civil  
24 disabilities were removed under the laws of that state  
25 (similar to PC Section 12023.4) is prohibited from



1 possessing handguns in California."

2 Do you see that?

3 A Yes.

4 Q What does this mean?

5 MS. ONYEAGBAKO: Objection. Calls for a legal  
6 conclusion.

7 BY MR. LEE:

8 Q Well, let me ask it this way: What  
9 information is this intended to convey to the trainee  
10 recipient of this material?

11 A This is kind of like the restoration of rights  
12 page where it specifically states California doesn't  
13 honor restoration of rights given by other states unless  
14 there's a governor's pardon and, you know, firearm  
15 rights are restored.

16 Q So you didn't agree that it was a policy with  
17 regard to the prior sections. I assume that's the same  
18 here, that this does not reflect a policy of the  
19 Department of Justice?

20 A No.

21 Q But is it fair to call this, likewise, a  
22 guideline?

23 A Yes.

24 Q Okay. So does this reflect the Department of  
25 Justice's guidelines generally that the California

1 Department of Justice does not recognize a restoration  
2 of firearms order from another state?

3 A Yes.

4 Q And the paragraph that this document  
5 references is Attachment 5, right?

6 A I see Attachment 5. Yes.

7 Q And if you're able to flip down to it,  
8 Attachment 5 is, likewise, an Attorney General opinion  
9 from 1967.

10 A That is correct.

11 Q And again, paragraph -- I'm sorry --  
12 Attachment 7 is only a portion of a document.

13 Do you agree?

14 A I agree.

15 Q And the entirety of that document doesn't --  
16 isn't actually attached to the training materials that  
17 are part of this document; is that correct?

18 A That's correct.

19 Q Now, this Attachment 7 doesn't actually  
20 reference Attorney General Opinion 67100, or at least it  
21 doesn't appear on the face of that attachment.

22 Is there any reason for you to dispute that  
23 this is part of Attorney General Opinion No. 67100?

24 MS. ONYEAGBAKO: Which attachment are you  
25 referring to?

1 you're aware of that resembles what you might call a  
2 guideline regarding the Department's treatment of  
3 out-of-state felony convictions that have either been  
4 set aside or vacated?

5 A No, not on -- no.

6 Q All right. So these portions of Exhibit 5 are  
7 the only direct discussion of this -- of these topics  
8 that you are aware of; is that fair?

9 A That's fair.

10 Q And in preparing for your deposition today as  
11 the 30(b)(6) designee on behalf of the Department, did  
12 you see any other internal document that described how  
13 the Department is supposed to treat out-of-state felony  
14 convictions that have been set aside or vacated?

15 A No.

16 Q So returning to Exhibit 006, which is the  
17 deposition notice --

18 A Okay.

19 Q -- Category 2, you're here to testify as to  
20 the Department's treatment and interpretation of  
21 out-of-state felony convictions for purposes of  
22 determining whether a person is entitled to purchase or  
23 possess firearms in the state of California.

24 And we touched on this a little bit earlier in  
25 your testimony, but what preparation did you undertake

1 specifically to testify on that category?

2 A I did my research on the case -- on the cases  
3 regarding out-of-state convictions.

4 Q All right. What do you mean by your research?

5 A I looked at the denial, what the denial was  
6 based on; I looked at our federal book dealing with  
7 out-of-state with that particular state; and looked at  
8 the terms that were on his out-of-state criminal history  
9 record.

10 Q When you say "his," you're talking about --

11 A An applicant or a client.

12 Q -- the plaintiff?

13 A The plaintiff. That's better.

14 Q Okay. Did you do anything else to prepare  
15 yourself to testify as to this category?

16 A No. No, I did not.

17 Q Now, as we understand it -- and you've touched  
18 on this earlier -- the Department's position with regard  
19 to this topic is that -- is primarily a straightforward  
20 reading of the statute, which is Penal Code Section  
21 29800; is that fair?

22 A That's fair.

23 Q And can you articulate what that position is?

24 A If an individual is convicted in another state  
25 for a felony, California would prohibit that person

1 applying for the firearm.

2 Q Okay. And it doesn't matter whether or not  
3 that conviction -- felony conviction was set aside in  
4 another state or vacated?

5 A No.

6 Q And it wouldn't matter if that person had  
7 their firearms rights restored in connection with that  
8 felony conviction being set aside?

9 A No.

10 Q And that is based on a simple straightforward  
11 reading of Section 29800?

12 A And the California page explaining restoration  
13 of rights given by other states requires a governor's  
14 pardon that specifically states his firearm rights are  
15 restored.

16 Q And what is that document that you're  
17 referencing?

18 A It was provided in one of your cases that  
19 you're working on. It's the California pardons and  
20 restorations. It's one of the documents.

21 Q Okay. You've produced in this case -- well,  
22 strike that.

23 You're saying that there's an exception when  
24 the -- there has been a gubernatorial pardon from  
25 another state that expressly restored the person's

1 what's in the state and the NICS check.

2 Q I see. So it does consult with the -- it does  
3 consult the NICS database in order to look at  
4 convictions nationwide?

5 A Correct. That is correct.

6 Q Okay. So you're saying that this page,  
7 AGO LINTON 119, comes from the FBI?

8 A Yes.

9 Q And why is this -- strike.

10 Is this page, AGO LINTON 119, is this a  
11 California Department of Justice policy?

12 A It's not a policy. It's just a reference.  
13 It's for reference. All 50 states have the same thing,  
14 same type of -- this is NICS. Like, for Texas, Texas  
15 has one. All the U.S. territories in the U.S., they all  
16 have this.

17 Q You're saying this is not a policy of the  
18 California Department of Justice?

19 A No. It's an opinion.

20 Q But it's an opinion that is followed, right?

21 A Correct.

22 Q And it's an opinion that provides guidance?

23 A Yes.

24 Q And it's an opinion that gets applied to  
25 people who fall within its parameters?

1 A Yes.

2 Q And it's an opinion that gets applied to  
3 people who fall within its parameters evenly?

4 A Evenly.

5 Q And without exception?

6 A No exceptions.

7 Q Okay. So -- but you're hesitating on calling  
8 it a policy?

9 A I don't call it a -- I just call it an opinion  
10 and use it as a reference.

11 Q Okay. It's an opinion that gets followed; is  
12 that fair?

13 A That's fair.

14 Q Okay. So aside from Penal Code 29800 --  
15 actually, let me just back up for a second.

16 (Exhibit 8 was marked for identification  
17 and is attached hereto.)

18 BY MR. LEE:

19 Q So we've marked as Exhibit 008 another  
20 document that has been produced in this case. It's a  
21 two-page document that was produced by the defense in  
22 this case. It's AGO LINTON 095 through 096.

23 MS. ONYEAGBAKO: Can you give us a moment,  
24 please?

25 MR. LEE: Sure.

1 BY MR. LEE:

2 Q Is that true?

3 A No.

4 Q All right. So then I must have misunderstood  
5 your testimony because we started down this by saying,  
6 you know, is there anything that resembles a DOJ policy  
7 regarding the treatment of out-of-state felony  
8 convictions?

9 The DOJ's policy is -- if I understand it --  
10 is that out-of-state felony convictions is not -- that  
11 are set aside or vacated in another state don't lift the  
12 firearms prohibition, and that's based solely on Section  
13 29800 and the one page of the FBI binder that's LINTON  
14 page 119.

15 Is that a fair recitation of what we've  
16 testified to so far?

17 A Yes.

18 MS. ONYEAGBAKO: I'm sorry, Counsel. I didn't  
19 hear the question. I think you started out with the  
20 DOJ's policy; is that correct?

21 MR. LEE: I lost the question in all of that.

22 I think I was asking the witness how  
23 California treats out-of-state felony convictions that  
24 have been set aside or vacated in another state.

25 And the witness says that California does not



1 recognize a felony conviction that has been set aside or  
2 vacated in another state.

3 Q Is that fair?

4 A That's fair.

5 Q And the basis for that, you indicated, sir, is  
6 Section 29800, a plain reading of Section 29800, which  
7 is marked as Exhibit 8, and the one page from the FBI  
8 binder that pertains to pardons; is that correct?

9 A That's correct.

10 Q All right. And is there any other source that  
11 you're aware of that formulates the DOJ's policy on that  
12 topic?

13 MS. ONYEAGBAKO: Sorry for interrupting, but  
14 objection. Lacks foundation.

15 THE WITNESS: It's not a policy. It's a penal  
16 code that we're following. It says Penal Code 29800, so  
17 we're following the penal code. It's not policy.

18 BY MR. LEE:

19 Q Well, does Penal Code Section 29800 reference  
20 out-of-state felony convictions that have been set aside  
21 or vacated?

22 A Yes.

23 Q In what respect?

24 A Under 29800, a person that is convicted of a  
25 felony in another state is prohibited in the state of

1 California unless he has a governor's pardon that  
2 specifically states his firearm rights are restored.

3 Q But 29800 doesn't specifically mention a  
4 situation where the felony conviction was set aside or  
5 vacated, right?

6 A That's correct.

7 Q So the Department has to issue its own  
8 separate policy on that subject; is that correct?

9 MS. ONYEAGBAKO: Objection. Lacks foundation.

10 THE WITNESS: I wouldn't consider it policy.  
11 I would consider it just following the penal codes. We  
12 just follow what the penal codes say.

13 BY MR. LEE:

14 Q Okay. So your testimony, then, is that there  
15 is no DOJ policy that pertains to the treatment of  
16 out-of-state felony convictions that have been set aside  
17 or vacated in their respective state because it's just  
18 simply a matter of reading 29800?

19 A Yes.

20 Q And the pardons issue, that might be an  
21 exception, but that comes from the one page of the FBI  
22 binder?

23 A That is correct.

24 Q Now, 29800(a)(1) obviously applies to  
25 convictions that occur in California itself, right?

1 A That is correct.

2 Q But there is an exception to this rule; is  
3 that true?

4 A (a)(1)?

5 Q Well, where the felony conviction was later  
6 reduced to a misdemeanor.

7 A (a)(1), that deals with outstanding warrants  
8 and felonies in the state of California or any other  
9 state.

10 Q What I'm saying is that for firearms  
11 prohibition purposes, there's an exception to  
12 29800(a)(1), and that's where a felony conviction was  
13 subsequently reduced to a misdemeanor, right?

14 MS. ONYEAGBAKO: Objection. Foundation.

15 THE WITNESS: If that offense is a reduceable  
16 charge.

17 BY MR. LEE:

18 Q Okay. Well, let's turn to Exhibit 5 again  
19 then, and specifically look at page 081.

20 MS. ONYEAGBAKO: I've got it. I have it in  
21 front of me now.

22 BY MR. LEE:

23 Q Okay. Do you see where it says "Subsequent  
24 Action - California Law," the heading?

25 A Page 81?

1 wouldn't honor it.

2 BY MR. LEE:

3 Q When you say "straight felony," you're talking  
4 about something that is a straight felony that is not a  
5 wobbler?

6 A That is correct.

7 Q Okay. So you're saying that even if the  
8 person got a 17(b) reduction on a straight felony, if it  
9 wasn't a wobbler, that doesn't restore the person's  
10 rights?

11 A Yes. We would prohibit him.

12 Q But there are -- but there are situations in  
13 California where a person is convicted of a wobbler, and  
14 it's subsequently reduced to a 17 -- to that misdemeanor  
15 pursuant to Section 17, correct?

16 A Correct.

17 Q And in those situations, that does restore a  
18 person's right to possess a firearm, correct?

19 A It depends on the offense. If it's domestic  
20 violence -- if it's domestic violence, it doesn't  
21 matter.

22 Q Right. So putting aside those exceptions that  
23 are listed here and that need to be updated because the  
24 penal code sections need to be updated, but putting  
25 aside those prohibiting misdemeanor sections, there are

1 circumstances under which a person convicted of a felony  
2 conviction, if it's a wobbler and reduced to a  
3 misdemeanor pursuant to Section 17, that person gets  
4 their rights restored, right?

5 A Yes.

6 Q And that's how -- generally speaking, that's  
7 how some people in California have their firearms rights  
8 restored to them even after they technically suffered a  
9 felony conviction, right?

10 MS. ONYEAGBAKO: Objection. Foundation.

11 THE WITNESS: Yes.

12 BY MR. LEE:

13 Q Okay. And it's frequent, right? Would you  
14 agree with me?

15 A I agree.

16 Q Okay. So -- but in that situation, that  
17 doesn't change the fact that that person was convicted  
18 of a felony at some point, right? Would you agree?

19 A Yes, I agree.

20 Q So looking at Section 29800, again, that's  
21 reflected in Exhibit 8, that doesn't tell the whole  
22 story, though, does it?

23 A No.

24 Q Because there are situations where a person  
25 has been convicted of a felony under the State of

1 California, but if the circumstances are correct, or if  
2 the circumstances warrant it, such as it's a wobbler,  
3 it's reduced to a misdemeanor, and it's not a  
4 disqualifying misdemeanor, that person gets their  
5 firearms rights back, right?

6 A That's correct.

7 Q It's just that California deems those felony  
8 convictions to have been misdemeanors; is that generally  
9 your understanding?

10 MS. ONYEAGBAKO: Objection. Vague as to -- I  
11 think you said these misdemeanors?

12 MR. LEE: I think I said California deems  
13 those convictions to have been misdemeanors.

14 THE WITNESS: Once the 17 PC has been granted?

15 BY MR. LEE:

16 Q Correct.

17 A Yes.

18 Q Okay. So that's under 17 of the California  
19 penal code.

20 So for purposes of another state, such as  
21 Arizona, Washington or Texas, it doesn't matter whether  
22 or not the laws of that state deem the felony conviction  
23 not to have occurred, right?

24 A Yes.

25 Q Yes, you're agreeing it doesn't matter?

1 A I'm agreeing it doesn't matter.

2 Q Right. That person is going to be prohibited  
3 in California no matter what the court of that state  
4 deems it to be?

5 A I would say -- I would say no. Because it  
6 depends on that -- if it's updated to his criminal  
7 history records, if it just shows felony, and it says  
8 set-aside or civil rights restored, reduced to a  
9 misdemeanor, that's how we contact them.

10 Q Right. I'm not talking about a reduction to a  
11 misdemeanor situation.

12 I'm talking about a felony conviction from  
13 another state that -- a felony conviction from another  
14 state that has been set aside or vacated, right? That  
15 straightforward situation, subsequently set aside or  
16 vacated from another state, not reduced to a  
17 misdemeanor.

18 So what I'm saying is that it doesn't matter  
19 whether that other state deems that felony conviction  
20 not to have occurred, right? From the DOJ's perspective  
21 it's irrelevant?

22 A Yes, under 29800. That's what we're basing  
23 our prohibition on.

24 MR. LEE: All right. Do you want to take a  
25 break before we move on to the next categories?

1 MS. ONYEAGBAKO: Yeah, I need to take a break.

2 MR. LEE: Okay. Let's just take ten minutes.

3 MS. ONYEAGBAKO: Okay. Thank you.

4 (Recess, 10:36 a.m. - 10:56 a.m.)

5 MR. LEE: Back on the record.

6 Q Mr. Matsumoto, right?

7 A That's correct.

8 Q Okay. So you're also here to testify --  
9 returning to the deposition notice, which is  
10 Exhibit 006, you're here to testify as to Categories 5  
11 and 6, and these are categories that generally pertain  
12 to the interpretation of Mr. Linton's criminal history  
13 and the basis for his denial of his attempt to purchase  
14 firearms.

15 Are you prepared to testify to those  
16 categories today?

17 A Yes.

18 Q And what documents did you review to prepare  
19 yourself to testify as to these categories regarding  
20 Mr. Linton's eligibility to purchase or possess  
21 firearms?

22 A The documents that were submitted by  
23 Ms. Onyeagbako regarding the case.

24 MR. LEE: Okay. And I have marked these and  
25 included them in the exhibit folder, but I did mess up.



1 MS. ONYEAGBAKO: Okay. Great. Right. But  
2 they're not -- but there may be gaps in that numbering.

3 MR. LEE: Correct.

4 MS. ONYEAGBAKO: And just to clarify, it was  
5 in the afternoon, not last night.

6 I just want to make sure so I can put the  
7 papers in front of the witness.

8 MR. LEE: Right.

9 THE WITNESS: Mr. Lee, I have the documents in  
10 front of me.

11 BY MR. LEE:

12 Q Okay. And I just want to make sure, again, in  
13 being able to testify as to the categories regarding  
14 Mr. Linton's eligibility, you didn't go outside of any  
15 of the documents that are in front of you?

16 A No.

17 Q Okay. So Mr. Linton began receiving denials  
18 of his attempted firearms purchases beginning in 2015;  
19 is that correct?

20 A That's correct.

21 Q What was the basis for the denials?

22 A A felony conviction appearing on his  
23 out-of-state criminal history record.

24 Q Was that a felony conviction from Washington  
25 State that occurred in 1987?

1 A That is correct.

2 Q And so let's make sure.

3 Aside from the Washington State felony  
4 conviction in 1987, was there anything else on  
5 Mr. Linton's criminal history that you saw that  
6 disqualified him from being able to purchase a firearm?

7 A California, he only has an application for  
8 beverage control. So he would be -- that California  
9 record, he'd be okay, but Washington felony conviction.

10 Q Right. I'm just making sure that there wasn't  
11 any other conviction out there that you're aware of that  
12 would otherwise disqualify him.

13 A Not that I'm aware of.

14 Q Okay. So if you turn to -- on Exhibit 11,  
15 specifically to page AGO LINTON 012, I think you have it  
16 up on the screen, too.

17 A Okay.

18 Q All right. So this is a document that says  
19 "USNA Denial."

20 Do you see that?

21 A Yes.

22 Q What is USNA?

23 A This is an ammunition denial.

24 Q Ammunition?

25 A Yes.

1 A Yes, I do.

2 Q Do you know what that would be, what the  
3 redacted portion is?

4 A Yes.

5 Q What is it, generally speaking?

6 A It's the FBI number.

7 Q Oh, I see. That's associated with Mr. Linton?

8 A That is correct.

9 Q Okay. So it's some type of identifier that  
10 identifies Mr. Linton or is connected to Mr. Linton  
11 somehow?

12 A Yeah. It's a federal investigation record.

13 Q Okay.

14 A His out-of-state record.

15 Q All right. Understood.

16 So if you can turn to pages -- sticking in  
17 Exhibit 011 for a minute -- pages that are marked 014  
18 through 016.

19 A Okay.

20 Q Can you tell us what pages 014 through 016  
21 are?

22 A That is his Federal Bureau of Investigation  
23 record for the State of Washington.

24 Q Are these records that the California DOJ  
25 accessed when it made the determination to deny

1 Mr. Linton?

2 A Yes.

3 Q Now, according to this printout, on page 015,  
4 it says -- it shows zero felonies, right?

5 A Yes.

6 Q And one gross misdemeanor; is that correct?

7 A That's correct.

8 Q Now, under the column of "Disposition," if you  
9 scroll down a little bit -- and I don't know if you can  
10 see my highlighting -- but are you able to see the  
11 highlighting that says "Disposition"?

12 A Yes, I can.

13 Q Okay. So here it says "Vacated."

14 Do you see that?

15 A Under "Status"? Yes.

16 Q Yes. Okay. So as far as the State of  
17 Washington is concerned, there were zero felonies on  
18 Mr. Linton's record at the time this printout was  
19 created. Would you agree?

20 A Zero felonies? You're saying there's zero  
21 felonies on his record?

22 Q Based on this printout. As far as the State  
23 of Washington was concerned, there were zero felonies.

24 A For the State of Washington?

25 Q Yes.

1 A For the State of Washington, yes.

2 Q All right. Now, where it says "Status:  
3 Vacated," do you see the handwritten notation "Not  
4 recognized CA," exclamation mark?

5 A Yes.

6 Q And that's on page 015?

7 A Yes.

8 Q Do you know whose handwriting that is?

9 A No, I don't.

10 Q Is it typical for an analyst to make  
11 handwritten notations on an FBI printout?

12 A Yes.

13 Q Is it likely that the analyst who looked at  
14 this issue is the one that made this notation?

15 A Yes.

16 MS. ONYEAGBAKO: Objection. Calls for  
17 speculation.

18 BY MR. LEE:

19 Q Okay. Let me just ask you this way: If you  
20 had to figure out who made that handwritten notation,  
21 how would you go about doing that?

22 A I'd probably ask the supervisor of the  
23 background clearance unit.

24 Q Okay. Would that be Ms. -- I think you said  
25 it was Sanchez?

1           A    Or Chia or Cheri or Rachel. One of the three.  
2    It's one of the three I would ask.

3           Q    Okay. Did you actually talk to the person who  
4    made the determination that Mr. Linton was not eligible  
5    to purchase or own firearms?

6           A    No. I don't know who it is. I don't know the  
7    analyst who denied it.

8           Q    Right. But you did your own independent  
9    review; is that correct?

10          A    That's correct.

11          Q    And after your own independent review of these  
12    records, you agree with that assessment that he's  
13    denied?

14          A    Yes, I do.

15          Q    And the basis is what's indicated in this  
16    handwritten notation, that vacated felony conviction is  
17    not recognized in California?

18          A    No. I did my own research, and this is an  
19    example where, on the out-of-state records, that you  
20    need to do your due diligence. Because if that  
21    "vacated" was there, I would see felony conviction. But  
22    since I see this "vacated," I would look into NICS  
23    terminology to see what "vacated" means.

24          Q    Okay. So you actually did reference what the  
25    term "vacated" means in NICS?

1 A Yes.

2 Q And was that -- is that available in  
3 Exhibit 017 somewhere?

4 A No.

5 Q Okay. So what is the -- where would you find  
6 the definition of "vacated" in -- as far as NICS is  
7 concerned?

8 A In the Washington State terminology page.

9 Q Okay. Is that available in Exhibit 17?

10 A No. Oh, wait. Excuse me.

11 Can you hold on for a minute, please?

12 Q Sure. Take your time.

13 A Yes, I have the document in front of me.

14 Q Okay. Is the terminology page that you're  
15 referring to, is that found at the very last page of  
16 that document, which is AGO LINTON 255?

17 A That's correct.

18 Q And -- let's see if I can do this correctly.

19 So this is a page -- Exhibit AGO LINTON 255,  
20 it's a Washington terminology page, right?

21 A Yes.

22 Q Where does this page come from?

23 A National instant gun check system. NICS.

24 Q The FBI binder?

25 A The FBI binder.

1 Q Is the FBI binder something that's updated  
2 regularly?

3 A Yes.

4 Q And it is -- is this, as far as you're aware,  
5 updated as of March 15, 2019?

6 A Yes.

7 Q And when you -- strike. Let me ask some more  
8 foundational questions.

9 Is this updated by the FBI?

10 A Yes.

11 Q And is it transmitted to agencies -- state  
12 agencies around the country?

13 A I would assume.

14 Q Okay. Is this -- this isn't something that's  
15 prepared specifically for California, in other words?

16 A No.

17 Q So walk me through the process of what you  
18 mean by -- when you say you'd do your due diligence and  
19 look up the word "vacated."

20 A So what I reviewed is the FBI record. I see,  
21 hey, felony conviction, then I saw a status, "vacated."

22 So that told me I needed to look under the  
23 Washington terminology to know what "vacated" means in  
24 Washington.

25 So that was -- page 255 was the page I went



1 to.

2 Q And then what did you do?

3 A Then I read the application of the  
4 terminology, and then I made my decision.

5 Q That the term "vacated" means that the felony  
6 conviction still exists for firearms possession  
7 purposes?

8 A Yes.

9 Q Okay. And that it is not deemed to be -- to  
10 not have existed; it still exists?

11 A It still exists through the criminal justice  
12 agencies, but not to the public.

13 Q Right.

14 So under this chart, it says -- under  
15 "Application of Terminology," "Offenses prior to July 1,  
16 1984, with dismissed probation is not a conviction  
17 unless the offense is an enumerated felony."

18 Do you see that?

19 A Yes, I do.

20 Q What does "enumerated felony" mean?

21 A Enumerated felony could be something similar  
22 to an offense in California, like a burglary. It's kind  
23 of like the same type of offense that occurred in  
24 that -- we'll say Washington that may occur in  
25 California.

1 who's reviewing this to determine eligibility, is  
2 there -- are you required to interpret what this page  
3 from a binder means?

4 A Yes.

5 Q And in your -- could you interpret this to  
6 mean that a felony offense vacated after 7-1-84 is  
7 prohibiting unless the firearms rights are restored, and  
8 if the firearms rights are restored, then it is vacated?

9 MS. ONYEAGBAKO: Objection. Vague as to  
10 "interpret."

11 THE WITNESS: Based on interpretation, if I  
12 saw that, I would still prohibit him because California  
13 doesn't honor restoration of rights, firearm rights,  
14 unless he has a governor's pardon.

15 BY MR. LEE:

16 Q Okay. So consistent with your training, your  
17 understanding, and the Department's policy, the firearms  
18 rights restoration provision of this definition is not  
19 relevant because California doesn't recognize  
20 restoration of firearms rights, period, unless it's a  
21 gubernatorial pardon?

22 A If it's out of state.

23 Q Out of state?

24 A Yes.

25 Q Okay. Returning to Mr. Stewart -- returning

1 to the deposition notice, you're also here to testify on  
2 Category 7 and 8, and these pertain to Mr. Stewart's  
3 criminal history and his denials of attempts to purchase  
4 firearms.

5 Do you see that?

6 A Yes.

7 Q And what documents did you review to prepare  
8 yourself to testify as to these subjects?

9 A The NICS documents, the terminology page, the  
10 national instant gun check system terminology page, the  
11 restoration of rights page, the felony and misdemeanor  
12 page, and the pardons and restorations page.

13 Q And that's from the NICS binder?

14 A That's from the NICS binder.

15 Q And did you specifically review Mr. -- strike  
16 that.

17 Did you also specifically review Mr. Stewart's  
18 criminal history?

19 A Yes, I did.

20 (Exhibit 14 was marked for identification  
21 and is attached hereto.)

22 BY MR. LEE:

23 Q And that is reflected in Exhibit 014?

24 A I have it in front of me, Mr. Lee.

25 Q Okay. So aside from the documents that we've

1 discussed that you mentioned you referenced and the  
2 criminal history reflected in Exhibit 014, are there any  
3 other documents that you referenced to determine  
4 Mr. Stewart's eligibility?

5 A Just the documents in front of me.

6 Q Okay. So Mr. Stewart received a DROS denial  
7 in 2018.

8 Do you see that?

9 A Yes, I do.

10 Q And what was the basis for the -- his denial?

11 A A felony burglary offense in another state.

12 Q Is this a 1976 felony burglary from Arizona?

13 A That is correct.

14 Q Looking at Mr. Stewart's criminal history, was  
15 there any other disqualifying conviction that prevents  
16 Mr. Stewart from owning a firearm in California?

17 A His California record would be okay. His  
18 out-of-state -- that's what we would base our denial on,  
19 his FBI record in the state of Arizona.

20 Q And that reflects just -- the only  
21 disqualifying conviction -- just to make sure we're on  
22 the same page, the only disqualifying conviction is that  
23 1976 felony burglary from Arizona, right?

24 A That is correct.

25 Q If you could turn to page AGO LINTON 068, and

1 that's part of Exhibit 14.

2 A I'm looking at it right now.

3 Q So again, here under the "Notification  
4 Comments," there's a redacted portion, but that would be  
5 his -- Mr. Stewart's FBI number, right?

6 A That is correct.

7 Q And that's why it's redacted for -- presumably  
8 for privacy or identifying information?

9 A Yes.

10 Q Okay. I do have some questions, though.

11 It says -- the rest of that comment says,  
12 "1976 Fel Burg Conv," presumably for felony burglary  
13 conviction, and it says "13-907 Granted 8-11-16."

14 Do you see that?

15 A Yes, I do.

16 Q What is 13-907?

17 A 13-907, I think in Arizona, it's a set-aside  
18 order. If you look under the terminology page, it would  
19 tell you what 13-907 is.

20 Q Okay. So your understanding is that 13-907  
21 refers to some -- some type of code, not necessarily a  
22 penal code, but some type of provision in Arizona law?

23 A That is correct.

24 Q And what does -- it says, "Not Recognized in  
25 CA/AT."

1 Do you see that?

2 A Yes, I do.

3 Q What is CA/AT?

4 A The way I read this is CA is California, AT is  
5 analyst.

6 Q So is it your understanding that this was a  
7 notation that was made by the analyst saying that, in  
8 essence, that felony -- for a 1976 felony burglary  
9 conviction, a 13-907 was granted in 2016 but not  
10 recognized in California?

11 A Yes, that's correct.

12 Q And do you know who that analyst was that  
13 prepared this?

14 A Yes.

15 Q Who is that person?

16 A Amanda Thomas.

17 Q Did you speak to Amanda in preparing for the  
18 deposition?

19 A No.

20 Q That's what AT stands for then? It's Amanda  
21 Thomas?

22 A Yes, that's correct.

23 Q Okay. All right. I thought it meant, like,  
24 something technician or something.

25 A Oh.

1 Q Okay. All right. Understood.

2 So one of the steps that you went through  
3 independently is -- to verify the accuracy of this -- is  
4 that you looked at the Arizona terminology page that's  
5 reflected in Exhibit 17; is that correct?

6 A That is correct.

7 Q And looking at the Arizona terminology page,  
8 did you look up what code 13-907 is?

9 A Yes, I did.

10 Q What is 13-907?

11 A For Arizona, I think that's the set-aside -- a  
12 set-aside order. It explains it on one of the  
13 terminology pages in Arizona. It's probably explained  
14 during the pardon and restoration of rights section.

15 Q Okay. So turning to -- flipping to Exhibit 17  
16 under AGO LINTON 216 --

17 A Okay.

18 Q Do you have that in front of you?

19 A Yes, I do.

20 Q -- does this tell you what 13-907 is?

21 A Yes.

22 Q So does this suggest that a 13-907 is a  
23 set-aside of a conviction?

24 A Yes.

25 Q All right. But flipping back to the analyst's

1 notation, the set-aside of conviction was granted in  
2 2016 but not recognized in California; is that correct?

3 A That is correct.

4 Q And the reason why it's not recognized is  
5 firearms rights restored has no effect in California?

6 A This would fall under the restoration of  
7 rights.

8 Q What do you mean?

9 A Where the subject would need a governor's  
10 pardon that would specifically grant his firearm rights  
11 restored.

12 Q And do you know, by the way -- I don't know  
13 that I asked you this -- do you know what the  
14 distinction is -- why there is a distinction between a  
15 governor's pardon that recognizes a restoration of  
16 rights and a court order that recognizes a restoration  
17 of rights?

18 MS. ONYEAGBAKO: Objection to the extent it  
19 calls for a legal conclusion. The witness is not a  
20 lawyer.

21 MR. LEE: Understood.

22 Q Do you have your own independent understanding  
23 of why there is a distinction?

24 A No.

25 Q So based on your review of the records, do you



1 agree with the analyst's conclusion that Mr. Stewart is  
2 prohibited from owning firearms in California?

3 A Yes, I do.

4 Q And that's because --

5 A -- of the restoration of rights.

6 Q In other words, the restoration -- the  
7 set-aside of his conviction is not recognized in  
8 California, and the restoration of rights was not  
9 pursuant to a pardon?

10 A That is correct.

11 Q Okay. Let's turn, finally, to Mr. Kendall  
12 Jones. And you're here, again, pursuant to  
13 deposition -- a deposition notice to testify to  
14 Categories 9 and 10 that deal with the interpretation of  
15 Mr. Jones's criminal history and his application for a  
16 certificate of eligibility?

17 A That's correct.

18 Q And what documents did you review to prepare  
19 yourself to testify to those categories?

20 A The documents that were given to me in the  
21 binder regarding Mr. Jones and our NICS legal binder,  
22 the terminology page, the restoration of rights page,  
23 the state interpretation, state info page.

24 Q And there are some criminal history records  
25 that I haven't received yet, but you looked at documents

1 page, the felony and misdemeanor page, restoration of  
2 rights page, domestic violence page, and the state  
3 prohibitor page.

4 Q Okay. So let's just start back up for a  
5 minute.

6 What is a certificate of eligibility?

7 A A certificate of eligibility is a form that an  
8 individual needs to be able to sell or work at a dealer  
9 to sell firearms.

10 Q Among other things?

11 A Among other things, it's -- well, pretty much  
12 that's it that I know of, that I'm aware of.

13 Q Okay.

14 A I don't work in that unit so I couldn't tell  
15 you. I strictly do backgrounds.

16 Q And we refer to them as COEs. Is that how you  
17 refer to them, too?

18 A Yes, that's correct. COE.

19 Q So are COEs handled by a different unit other  
20 than -- different than background clearance?

21 A Yes. Yes.

22 Q Now, Mr. Jones received a denial of his COE,  
23 the latest, in 2019; is that correct?

24 A That is correct.

25 MR. LEE: And I will pull up and reference

1 Exhibit 015.

2 (Exhibit 15 was marked for identification  
3 and is attached hereto.)

4 THE WITNESS: It's blacked out. Oh,  
5 Exhibit --

6 BY MR. LEE:

7 Q Exhibit 015?

8 MS. ONYEAGBAKO: Oh, Exhibit 15? Okay.

9 THE WITNESS: Okay.

10 BY MR. LEE:

11 Q So is this Exhibit 15 a letter reflecting  
12 Mr. Jones's denial of a COE as of February 23, 2019?

13 A That's correct.

14 Q What's the basis for his denial of the COE?

15 A Felony conviction. I think it was for misuse  
16 of a credit card.

17 Q And that was a felony conviction from the  
18 State of Texas?

19 A State of Texas. Yes.

20 Q All right. And you've undertaken a review of  
21 his criminal history that's reflected in the documents?

22 A Yes, I have.

23 Q And are there any other disqualifying  
24 convictions that prevent Mr. Jones from getting his COE  
25 aside from the Texas conviction for credit card abuse?

1           A    No.

2                   MR. LEE: I'm going to mark and put up what  
3 we've marked as Exhibit 016, or Exhibit 16.

4                   (Exhibit 16 was marked for identification  
5 and is attached hereto.)

6 BY MR. LEE:

7           Q    And this is what purports to be a certified  
8 criminal history of Mr. Jones from the State of Texas as  
9 of April 2019.

10                   Do you see that?

11           A    Oh, yes. Sorry. April 6th of 2019.

12           Q    That's okay.

13                   So does this generally track -- does this  
14 document generally track with the criminal history that  
15 you reviewed?

16           A    Yes. This is one of the documents that an  
17 analyst sent to Texas for clarification.

18           Q    Okay. According to this Exhibit 16, it shows  
19 that the disposition of that felony conviction is  
20 dismissed.

21                   Do you see that?

22                   Let's see if I can pull that up. On the  
23 bottom of the page, it says page 2 of 3.

24           A    Okay. Oh, right there. Okay.

25           Q    And then where it says "Court Data," the

1 disposition is "Dismissed."

2 Do you see that?

3 A Yes, I do.

4 MS. ONYEAGBAKO: I'm sorry, Counsel. Could  
5 you enlarge the view just a little bit on your screen?  
6 Thank you.

7 MR. LEE: Does that work?

8 MS. ONYEAGBAKO: Yes.

9 THE WITNESS: That works.

10 BY MR. LEE:

11 Q And then under the -- it looks like it's a  
12 heading called "Provision." Do you see it says "Set  
13 Aside"?

14 A Yes, "Provision, Set Aside."

15 Q Okay. So what's -- why is it that California  
16 does not recognize the dismissal or set-aside of the  
17 felony conviction for purposes of issuing Mr. Jones a  
18 COE?

19 MS. ONYEAGBAKO: Objection. Foundation.

20 BY MR. LEE:

21 Q Okay. Let me ask it this way: Is Mr. Jones  
22 prohibited from owning firearms in California?

23 A Yes.

24 Q And what's the basis for that prohibition?

25 A The set-aside -- we wouldn't honor a set-aside

1 in the state of California.

2 Q And --

3 A That "Provision, Set Aside," again, we would  
4 go to our NICS terminology page to see what "set aside"  
5 means in the state of Texas.

6 Q And by specifically looking at a definition of  
7 "set aside" in the state of Texas would determine --  
8 help you determine whether or not --

9 A If he's eligible?

10 Q Yes.

11 A Yes. I would do further research on this  
12 because how can -- it's showing a conviction of 8-22,  
13 and it's showing it dismissed on 8-22. I would have to  
14 do more research. Is he convicted or is it dismissed?

15 Q I think that the conviction occurred in 1980,  
16 if I'm correct, and that the dismissal occurred in 1983.

17 A Okay.

18 Q So what happens is, in a lot of instances, a  
19 court allows a person to plead guilty to an offense  
20 if -- with the proviso that if they -- if they  
21 successfully complete their probation, that they can  
22 come back and they will enter a dismissal of the -- of  
23 the charge, of the original felony conviction.

24 Does that comport with your understanding as  
25 to what does occur in states sometimes?

1 MS. ONYEAGBAKO: Objection to the extent it  
2 calls for a legal conclusion and lacks foundation. The  
3 witness is not a lawyer.

4 MR. LEE: Right.

5 Q But is that -- Mr. Matsumoto, does that  
6 generally comport with your understanding of what does  
7 occur from time to time?

8 A Yes.

9 Q But under those circumstances, do you think  
10 that further research is required?

11 A Yes.

12 Q What specifically would you do?

13 A For this particular offense, I would do my due  
14 diligence and check to see if it was reduced. It's  
15 still showing a felony, but a felony -- it shows a  
16 convicted felony.

17 If I saw convicted misdemeanor, he would be  
18 fine.

19 Q But it says "Dismissed," does it not?

20 A Yeah, it says "Dismissed."

21 Q Okay.

22 A But that's based on the set-aside. That's the  
23 reason why the case was dismissed, because it was set  
24 aside.

25 Q But it says "Dismissed," does it not?

1 A Yes.

2 Q And if you turn to Exhibit 17, page 228 --

3 A Exhibit 17? Oh, that's -- 228? There it is.

4 Okay. I have 228 in front of me.

5 Q And this is the Texas terminology page, is it  
6 not?

7 A That's correct.

8 Q And that's from the FBI binder or the NICS  
9 binder?

10 A Yes, that's correct.

11 Q And there's a definition for "Dismissed,"  
12 right? Their definition of terminology, this is the  
13 final disposition.

14 A Okay. Did you read the set-aside section?

15 Q I'm asking you, does it not -- does it not say  
16 this is a final disposition under the definition of  
17 terminology?

18 A Yes, it does.

19 Q Under the application of terminology, where it  
20 says "Dismissed," it says "This is not a conviction"; is  
21 that correct?

22 A That's correct.

23 Q So under the Texas terminology page, the term  
24 "dismissed" means it's not a conviction, correct?

25 A Correct.



1 Q But you're saying that you go beyond that?

2 A Well, the provision -- I would look under --  
3 under his record, it says "set-aside." So I wouldn't  
4 look under "dismissed." I would look under what "set  
5 aside" says first.

6 Q Okay. So turn to page AGO LINTON 231.

7 A Okay.

8 Q It says "set-aside," right?

9 A Correct.

10 Q And then application of terminology, this is  
11 not a conviction, right?

12 A Correct.

13 Q So what is it -- so you're cross-referencing  
14 the NICS binder, looking at Texas terminology. But  
15 under both -- as a definition of both "dismissed" and  
16 "set-aside," the application of terminology says this is  
17 not a conviction, right?

18 A That's correct.

19 Q So is it not a conviction?

20 A It may not be a conviction in Texas, but in  
21 California, we wouldn't honor that Texas --

22 Q Why -- why do you -- looking at these  
23 definitions, do you still have the opinion that  
24 Mr. Jones is prohibited in California?

25 A Yes.

1 Q Based on what?

2 A Based on either 29800 or the restoration of  
3 rights.

4 Q So why do you consult with the -- why do you  
5 consult the NICS binder at all? The NICS binder is  
6 actually irrelevant, isn't it?

7 MS. ONYEAGBAKO: Objection. Vague,  
8 foundation.

9 BY MR. LEE:

10 Q You can answer.

11 A Oh, okay. Sometimes. We only use it for  
12 reference. It's only reference material.

13 Q But it's a useless -- it's meaningless -- it's  
14 a meaningless reference exercise, isn't it?

15 MS. ONYEAGBAKO: Objection. Foundation,  
16 vague.

17 BY MR. LEE:

18 Q You can answer.

19 A Technically, I wouldn't say it wasn't a  
20 meaningless reference page.

21 Q You wouldn't say that it wasn't? I'm sorry.

22 A Meaning -- okay. It's not a meaningless page.  
23 How's that?

24 Q You say you consult this NICS binder to look  
25 at the state terminology. But the state terminology in

1 both instances says that it's not a conviction, right?

2 A Okay. Then --

3 Q Do you agree?

4 A I agree. Okay.

5 Q So why even consult the Texas terminology page  
6 in the first place if it doesn't really mean anything?

7 MS. ONYEAGBAKO: Will you allow the witness  
8 to -- you cut him off. Allow him to finish his answer.

9 THE WITNESS: Because based on this Texas  
10 terminology page, I would look at this page, then I  
11 would look under the page where -- about firearms and  
12 restoration and how an individual could restore his gun  
13 rights in Texas.

14 And if you look at that one page under -- on  
15 the very top, it says the only -- restoration of rights  
16 or, you know, gun rights restored in Texas is a  
17 presidential pardon.

18 BY MR. LEE:

19 Q You mean gubernatorial pardon?

20 A Or presidential pardon. That's what it says  
21 on the top of the -- the pardons and restoration page.

22 Q Does the President of the United States even  
23 have the ability to pardon state offenses?

24 MS. ONYEAGBAKO: Objection. Calls for a legal  
25 conclusion. The witness is not a lawyer.

1 that we follow for anybody that buys a firearm in state  
2 or out of state.

3 Q But the thing that you go through to -- you  
4 said you looked at the Texas terminology page to look at  
5 what it means to be dismissed or what it means to be set  
6 aside.

7 But neither of that matters, right? I mean,  
8 it doesn't matter because it's not -- it doesn't matter  
9 what the definition of "set aside" or "dismissed" means  
10 because you're going to apply your own -- you're going  
11 to apply 29800 no matter what, right?

12 A That's correct.

13 Q And if it's a conviction, it's a conviction,  
14 right?

15 A Correct.

16 Q And even under Texas terminology, if Texas  
17 considers the set-aside not to be a conviction, then  
18 that doesn't matter, right?

19 A That's correct.

20 Q And if Texas determines or deems a dismissal  
21 to be not a conviction, that doesn't matter, either,  
22 right?

23 A That's correct.

24 Q So really, Texas terminology doesn't matter at  
25 all. It's just simply applying 29800.

1 MS. ONYEAGBAKO: Objection. Misstates the  
2 witness's testimony.

3 BY MR. LEE:

4 Q Is that fair?

5 A That's fair.

6 Mr. Lee, can you look at page 235? Oh, wait.  
7 Excuse me. 236. Page 236.

8 I'm reading -- this is under the section "How  
9 are firearm rights restored in Texas for felony  
10 offenses? Are they restored automatically? By Texas  
11 constitution? By court order?"

12 "A governor's pardon is the only avenue to  
13 restore firearm rights."

14 I can go by that to determine if he's eligible  
15 or not. If I read that statement, so they're telling me  
16 only a governor's pardon could restore firearm rights.

17 Q That's what -- is that what you're relying  
18 on to determine that the only way to restore his firearm  
19 rights is by a governor's pardon?

20 A That's what's on one of the Texas State pages,  
21 so I'm assuming that's the only way to restore his  
22 firearm rights.

23 Q But the next sentence, doesn't it say that  
24 "Convictions set aside under Texas Code of Criminal  
25 Procedure, Article 42.12, Section 20, removes the

1 penalties and disabilities of the conviction"?

2 A What -- what penalties does it say -- does it  
3 remove his firearm rights? It specifically has to say  
4 that.

5 Q It removes the penalties and disabilities of  
6 the conviction. Isn't that what it says?

7 A Yes.

8 Q Isn't that under the heading of this -- of the  
9 section that says "How are firearm rights" -- underlined  
10 "firearm rights" -- "restored in Texas for felony  
11 offenses"?

12 A Correct.

13 Q Does this section not seem to refer to the  
14 removal of penalties and disabilities related to firearm  
15 rights?

16 A You could say that.

17 Q Well, you're --

18 A Which is correct? Is a governor's pardon the  
19 only way or is the restoration of rights -- even if it's  
20 a restoration of rights, we wouldn't honor it.

21 The Texas code removes the penalties and  
22 disabilities of the conviction. Wouldn't that be  
23 similar to a restoration of rights?

24 Q Well, a pardon doesn't -- a pardon -- I mean,  
25 look, I don't mean to argue with you. I know you're not

1 a lawyer.

2 But if a conviction is set aside under Texas  
3 law and it is no longer a conviction, then that removes  
4 the penalties and disabilities of the conviction.

5 That's what this says, right?

6 A Correct.

7 Q And you're supposed to rely on all of this  
8 together, right? You're not supposed to look for the  
9 most restrictive --

10 A Right.

11 Q -- interpretation. You're supposed to look at  
12 it the most -- the most fairly and even-handedly way you  
13 can, right?

14 A That is correct.

15 Q So in some instances, a pardon doesn't remove  
16 the fact of the conviction. It simply says that the  
17 person is -- is pardoned from any punishment from the  
18 conviction. But I don't think that anyone is quarreling  
19 that the conviction never occurred, right?

20 A That's correct.

21 Q But under Texas law, at least according to the  
22 terminology page, it's deemed not to be a conviction if  
23 it's set aside or dismissed.

24 Would you agree?

25 A I would agree.

1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby certify:

3 That the foregoing proceedings were taken  
4 before me at the time and place herein set forth; that  
5 any witnesses in the foregoing proceedings, prior to  
6 testifying, were administered an oath; that a record of  
7 the proceedings was made by me using machine shorthand  
8 which was thereafter transcribed under my direction;  
9 that the foregoing transcript is a true record of the  
10 testimony given.

11 Further, that if the foregoing pertains to the  
12 original transcript of a deposition in a Federal Case,  
13 before completion of the proceedings, review of the  
14 transcript [x] was [ ] was not requested.

15 I further certify I am neither financially  
16 interested in the action nor a relative or employee of  
17 any attorney or any party to this action.

18 IN WITNESS WHEREOF, I have this date  
19 subscribed my name.

20  
21 Dated: this 12 day of June, 2020.

22 Carla Soares

23  
24 CARLA SOARES

25 CSR No. 5908



**LEE EXHIBIT B**

1 XAVIER BECERRA  
 Attorney General of California  
 2 ANTHONY R. HAKL  
 Supervising Deputy Attorney General  
 3 MAUREEN C. ONYEAGBAKO  
 Deputy Attorney General  
 4 State Bar No. 238419  
 1300 I Street, Suite 125  
 5 P.O. Box 944255  
 Sacramento, CA 94244-2550  
 6 Telephone: (916) 210-7324  
 Fax: (916) 324-8835  
 7 E-mail: Maureen.Onyeagbako@doj.ca.gov  
*Attorneys for Defendants Xavier Becerra, in  
 8 his official capacity as Attorney General of  
 California, Brent E. Orick, in his official  
 9 capacity as Acting Chief for the Department  
 of Justice Bureau of Firearms, and Robert D.  
 10 Wilson, in his official capacity as Deputy  
 Attorney General*

11 IN THE UNITED STATES DISTRICT COURT  
 12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
 13

14  
 15  
 16 **CHAD LINTON, et al.,**

17 Plaintiffs,

18 v.

19 **XAVIER BECERRA, in his official  
 20 capacity as Attorney General of  
 California, et al.,**

21 Defendants.  
 22

3:18-cv-7653-JD

**DEFENDANTS' RESPONSES TO  
 PLAINTIFFS' FIRST SET OF  
 REQUESTS FOR ADMISSIONS**

23 **RESPONDING PARTY:**

Plaintiffs Linton, Stewart, and Jones

24 **PROPOUNDING PARTY:**

Defendants Becerra, Orick, and Wilson

25 **SET NUMBER:**

One  
 26  
 27  
 28

1           **REQUEST FOR ADMISSION NO. 1:** The ORDER ON MOTION RE:  
2 VACATING RECORD OF FELONY CONVICTION GRANTED (ORVCJG),  
3 issued by the Superior Court of the State of Washington, Island County, on  
4 March 21, 2016, a certified copy of which is attached as Exhibit 001, is genuine.

5           **RESPONSE TO REQUEST FOR ADMISSION NO. 1:** Defendants are  
6 unable to admit or deny this request. They have no reason to doubt the genuineness  
7 of a certified document, but because they do not work for the Superior Court of the  
8 State of Washington, they lack sufficient information to admit or deny the  
9 genuineness of Exhibit 001.

10           **REQUEST FOR ADMISSION NO. 2:** The RCW 9.41.040(4) ORDER  
11 RESTORING RIGHT TO POSSESS FIREARMS issued by the Superior Court of  
12 the State of Washington, Island County, on April 18, 2016, a certified copy of  
13 which is attached hereto as Exhibit 002, is genuine.

14           **RESPONSE TO REQUEST FOR ADMISSION NO. 2:** Defendants are  
15 unable to admit or deny this request. They have no reason to doubt the genuineness  
16 of a certified document, but because they do not work for the Superior Court of the  
17 State of Washington, they lack sufficient information to admit or deny the  
18 genuineness of Exhibit 002.

19           **REQUEST FOR ADMISSION NO. 3:** The ORDER issued by the Superior  
20 Court of Yuma County, Arizona, on August 11, 2016, a certified copy of which is  
21 attached hereto as Exhibit 003, is genuine.

22           **RESPONSE TO REQUEST FOR ADMISSION NO. 3:** Defendants are  
23 unable to admit or deny this request. They have no reason to doubt the genuineness  
24 of a certified document, but because they do not work for the Superior Court of the  
25 State of Yuma County, Arizona, they lack sufficient information to admit or deny  
26 the genuineness of Exhibit 003.

27       ///

28       ///

1           **REQUEST FOR ADMISSION NO. 4:** The FULL TERMINATION  
2 ORDER OF THE COURT DISMISSING THE CAUSE issued by the Criminal  
3 District Court of Harris County, Texas, on August 22, 1983, a certified copy of  
4 which is attached hereto as Exhibit 004, is genuine.

5           **RESPONSE TO REQUEST FOR ADMISSION NO. 4:** Defendants are  
6 unable to admit or deny this request. They have no reason to doubt the genuineness  
7 of a certified document, but because they do not work for the Criminal District  
8 Court of Harris County, Texas, they lack sufficient information to admit or deny the  
9 genuineness of Exhibit 004.

10           **REQUEST FOR ADMISSION NO. 5:** All of the individual plaintiffs,  
11 Linton, Stewart and Jones, are eligible to own and possess firearms under federal  
12 law, pursuant to 18 U.S.C. § 921(a)(20).

13           **RESPONSE TO REQUEST FOR ADMISSION NO. 5:** Defendants object  
14 to this request as compound because it asks about the eligibility of three different  
15 individuals. Subject to and without waiving the foregoing objection, Defendants  
16 are unable to admit or deny this request. A determination of Plaintiffs' federal  
17 eligibility was unnecessary because of the prohibition imposed under California  
18 Penal Code § 29800.

19           **REQUEST FOR ADMISSION NO. 6:** None of the individual plaintiffs,  
20 Linton, Stewart and Jones, is prohibited from owning and possessing firearms  
21 under federal law, pursuant to 18 U.S.C. § 921(a)(20).

22           **RESPONSE TO REQUEST FOR ADMISSION NO. 6:** Defendants object  
23 to this request as compound because it asks about the status of three different  
24 individuals. Subject to and without waiving the foregoing objection, Defendants  
25 are unable to admit or deny this request. A determination of Plaintiffs' federal  
26 eligibility was unnecessary because of the prohibition imposed under California  
27 Penal Code § 29800.  
28

1           **REQUEST FOR ADMISSION NO. 7:** The DEPARTMENT’s  
2           “”Background Clearance Unit DROS Procedures” memorandum, attached hereto as  
3           Exhibit 005 (hereinafter, “DROS Procedures Memorandum”) is genuine.

4           **RESPONSE TO REQUEST FOR ADMISSION NO. 7:** To the extent that  
5           Exhibit 005 consists of the pages marked AGO\_LINTON\_078 through 094,  
6           Defendants deny that the document is a memorandum and admit that the document  
7           is genuine.

8           **REQUEST FOR ADMISSION NO. 8:** The DROS Procedures  
9           Memorandum (Exhibit 005) describes the process by which the DEPARTMENT is  
10          to determine whether persons are clear to purchase firearms within the State of  
11          California using the Dealer Record of Sale (DROS) system.

12          **RESPONSE TO REQUEST FOR ADMISSION NO. 8:** Deny. The  
13          document marked AGO\_LINTON\_078 through 094 does not describe a process  
14          but, rather, reflects the law governing eligibility for firearms in the State of  
15          California. Defendants also deny that the document is a memorandum.

16          **REQUEST FOR ADMISSION NO. 9:** The DROS Procedures  
17          Memorandum (Exhibit 005, the original of which may include all of the  
18          attachments) is the only document constituting the DEPARTMENT’s written  
19          policy in denying out-of-state former felons the ability to purchase and/or possess  
20          firearms possession in the State of California when those felony convictions have  
21          been set aside or vacated in their respective states of origin.

22          **RESPONSE TO REQUEST FOR ADMISSION NO. 9:** Defendants object  
23          to this request as compound because it asks about felony convictions that have been  
24          vacated or set aside. Defendants deny that Exhibit 005 is a memorandum and deny  
25          that it constitutes a “policy.”

26          ///  
27          ///  
28          ///



1           **REQUEST FOR ADMISSION NO. 10:** Aside from the DROS Procedures  
2 Memorandum (Exhibit 005, the original of which may include all of the  
3 attachments) there is no written policy of the DEPARTMENT as to treatment of  
4 out-of-state felony convictions that have been vacated, set aside, or dismissed in  
5 their respective states of origin.

6           **RESPONSE TO REQUEST FOR ADMISSION NO. 10:** Defendants  
7 object to this request as compound because it asks about felony convictions that  
8 have been vacated, set aside, or dismissed. Subject to and without waiving the  
9 foregoing objection, and to the extent the requests seeks information about a written  
10 policy related to the possession of firearms, Defendants deny that Exhibit 005 is a  
11 memorandum and deny that Exhibit 005 constitutes a "policy." Penal Code  
12 § 29800 serves as the guiding principle on treatment of out-of-state felony  
13 convictions and possession of firearms in California.

14 Dated: January 13, 2020

Respectfully submitted,

XAVIER BECERRA  
Attorney General of California  
ANTHONY R. HAKL  
Supervising Deputy Attorney General



MAUREEN C. ONYEAGBAKO  
Deputy Attorney General  
*Attorneys for Defendants Xavier  
Becerra, in his official capacity as  
Attorney General of California, Brent  
E. Orick, in his official capacity as  
Acting Chief for the Department of  
Justice Bureau of Firearms, and  
Robert D. Wilson, in his official  
capacity as Deputy Attorney General*

25 SA2019100119  
14307754.docx

**DECLARATION OF SERVICE BY E-MAIL and U.S. Mail**

Case Name: **Linton, Chad, et al v. Xavier Becerra**  
No.: **3:18-cv-7653-JD**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On January 13, 2020, I served the attached **DEFENDANTS' RESPONSES TO PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSIONS** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, addressed as follows:

George M. Lee  
Seiler Epstein, LLP  
275 Battery Street, Suite 1600  
San Francisco, CA 94111  
**E-mail:** gml@seilerepstein.com

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 13, 2020, at Sacramento, California.

Eileen A. Ennis  
Declarant

  
Signature

**LEE EXHIBIT C**





# Background Clearance Unit DROS Procedures



---

## Basic Firearms Eligibility Check

---

A Basic Firearms Eligibility Check (BFEC) is run on all subjects that are processed in the California Firearms Information System (CFIS) and DROS. Any record(s) that may possibly match that individual will require review by the analyst.

The BFEC process searches the following databases for possible prohibiting records:

**CHS** – Criminal History System (California)

**MHFPS/Ref File** – Mental Health Firearms Prohibition System / Reference File

**NICS/III/FBI** – National Instant Gun Check System / Interstate Identification Index / Federal Bureau of Investigation

**ICE** – Immigration and Customs Enforcement

**WPS/SRF/DVROS** – Wanted Persons System/Supervised Release File/Domestic Violence Restraining Order System

**DMV** – Department of Motor Vehicles

Exhibit

5

Matsumoto 6/5/20



## Background Clearance Unit DROS Procedures



---

### Overview

---

The analyst should become familiar with the following:

- PC 29805 (known as 12021 PC prior to 2012)
- PC 29905 (known as 12021.1 PC prior to 2012)
- PC 23515 (known as 12001.6 PC prior to 2012)
- PC 1203.073 (Felony Dangerous Drugs)
- WIC 707(B) (Juveniles)
- WIC 8100 (Mental Health)
- Title 18 USC 922 (Federal)
- Knowing the difference between infractions, misdemeanors, and felonies
- Able to read and understand a CII rapsheet and FBI rapsheet
- Able to read a court disposition



# Background Clearance Unit DROS Procedures



## Interpreting Criminal Records

### **Felony Convictions**

A conviction constitutes a felony (PC 17) if the defendant received:

- State Prison
- State Prison suspended
- Proceedings suspended
- Probation
- Probation and jail, and jail was not suspended
- Sentencing to Youth Authority out of Superior Court and was later committed to State Prison; or
- If conviction is a straight felony or one of the prohibiting misdemeanors pursuant to 12021(c)(1) PC, a release from California Youth Authority (CYA) pursuant to W&I 1772 does not restore eligibility to purchase or possess a firearm

A "wobbler" is any offense punishable by the court's discretion as a misdemeanor or felony.

### **Conviction of a "wobbler" constitutes a misdemeanor if:**

- Judgment imposes a punishment other than State Prison
- Judgment imposes County Jail only
- Judgment imposes County Jail, suspended and probation is given
- Judgment imposes 365 days jail or subject received jail time and all or part of the jail time had been suspended
- Court commits defendant to the Youth Authority and declares offense to be a misdemeanor (person is still prohibited if misdemeanor offense listed in 12001.6 or 12021.1 PC)
- Court grants probation without imposition of sentence (actual sentencing) and at that time or thereafter, declares conviction to be a misdemeanor
- Probation is granted and court declared the conviction to be a misdemeanor
- Defendant is committed to Youth Authority and then paroled (still prohibited if misdemeanor offense is listed in 12001.6 or 12021.1 PC); or
- Juvenile court decided case. However, subject is prohibited if conviction is listed under 707(b) WIC, an offense described in Section 1203.073(b) PC or any offense enumerated in 12021(c)(1) OC and the person is under age 30

### **Conviction of a "wobbler" constitutes a felony if:**

- Defendant received probation only and the court did not declare offense to be a misdemeanor
- Defendant received probation and county jail as condition of probation; or
- Judgment imposes State Prison or State Prison suspended

### **Other States**

The laws of that particular state where the conviction occurred apply. If, for example, the conviction was a felony in a given state and at a given time, the DOJ considers it as a prohibition pursuant to PC Section 12021(a)(1). However, when in doubt, consult with a supervisor.





## Background Clearance Unit DROS Procedures



### Federal Law

Pursuant to Federal Law, an offense punishable by death or imprisonment exceeding one year is a felony (US Code, Title 18, Section 1). The actual sentence given does not alter this; however, PC 12021 firearms prohibition only applies if:

- A conviction of a like offense under California Law can only result in imposition of felony punishment;
- Or the defendant was sentenced to a Federal correctional facility for more than 30 days, received a fine of more than \$1,000, or received both such punishments (PC Sections 12021(b)(1) and (2)). However, when in doubt, consult with a supervisor.

### US Military Offenses

An offense punishable by death or imprisonment exceeding one year is a felony (Refer to Articles of War). The actual sentence given does not alter this.

Subjects with the following types of military discharges are firearms prohibited:

- Dishonorable Discharge
- A bad conduct discharge (BCD) would depend on the charge and the punishment for that offense. Consult with a supervisor for any subject with BCD.

### Other Countries

In the Supreme Court ruling of *US v. Bean*, foreign felony convictions cannot be used to prohibit firearm acquisition or possession.

### Subsequent Action – California Law

A dismissal pursuant to PC Section 1203.4 *does not restore* the right to possess firearms unless dated prior to 09/15/1961.

A dismissal action pursuant to PC Section 1203.4(a) restores the person's right to possess a firearm only if jail time was imposed on a misdemeanor conviction and the offense is not listed in PC Section 12021.1 or a misdemeanor conviction for domestic violence (273.5 or 243(a)(1) PC).

**A reduction to a misdemeanor pursuant to PC Section 17 restores the person's right to possess a firearm.** Exceptions are misdemeanor convictions listed under PC Sections 12001.6, 12021(c)(1) and 12021.1.

A straight felony conviction cannot be reduced to a misdemeanor pursuant to PC 17. If unsure about any PC 17 reductions, consult a supervisor.

A dismissal action pursuant to WIC Section 1772 granted after the release from CYA does not restore the right to possess firearms if the conviction was for a straight felony or a misdemeanor that would prohibit possession (California Court decision 12/87). **See Attachment 1**

A dismissal action granted pursuant to WIC Section 3200, does not restore the right to possess firearms (Opinion CR76/31/1/L, DAG Adler, 09/15/1976). **See Attachment 2**

Conviction of a felony, the record of which is subject to destruction pursuant to H&S Code Section 11361.5(b) does not bar firearm possession (Refer to Opinion No. 80-411, DAG Dobson, 06/10/1980). **See Attachment 3**

### Pardons – California Law

A California Governor's Pardon restores the right to possess firearms, but must include a Certificate of Rehabilitation pursuant to PC Section 4852.17 or Restoration of Firearms Rights pursuant to PC Section 4854.

Firearms rights are not restored if the felony involved the use of a Dangerous Weapon pursuant to PC Sections 4852.17 and 4854.





## Background Clearance Unit DROS Procedures



### Pardons / Civil Liability Relief – Other States

A person convicted of a felony in another state who has a governor's pardon from that state is prohibited from possessing a firearm in California, unless the pardon expressly restores the right to receive and possess firearms. Rights are not restored if the conviction involved the use of a dangerous weapon (AG Opinion No. 82-801, 10/13/1983). **See Attachment 4**

A person convicted of a felony in another state whose civil disabilities were removed under the laws of that state (similar to PC Section 12023.4) is prohibited from possessing handguns in California (AG Opinion No. 67-100, DAG Winkler, 07/26/1967). **See Attachment 5**

### Pardons and Grants of Relief – Federal

A person convicted of a felony under US statutes who has received a Presidential Pardon is eligible to possess firearms (Supreme Court decision Bradford v. Cardoza (1918) 195 Cal. App. 3d 361). **See Attachment 6**

A person convicted of a felony by the State of California, another state, or the Federal Government, who has received a grant of relief of disability from the BATF pursuant to Title 18, US Code, Section 925(c) is prohibited from possessing a firearm (Opinion No. CR72/63, DAG Chock, 04/03/1973). **See Attachment 7**

Under Title 18 US Code Section 5024, California is required to recognize expungement of a youthful offender's conviction pursuant to Title 18 US Code 5021. A person who has received such expungement may possess firearms in California (Opinion No. CR72/63, DAG Chock, 04/03/1973, also E. Bauer's Memo dated 02/28/1977). **See Attachment 8**

### Other Denial Categories By Department Policy

Department Policy is to deny firearm purchases to any person who:

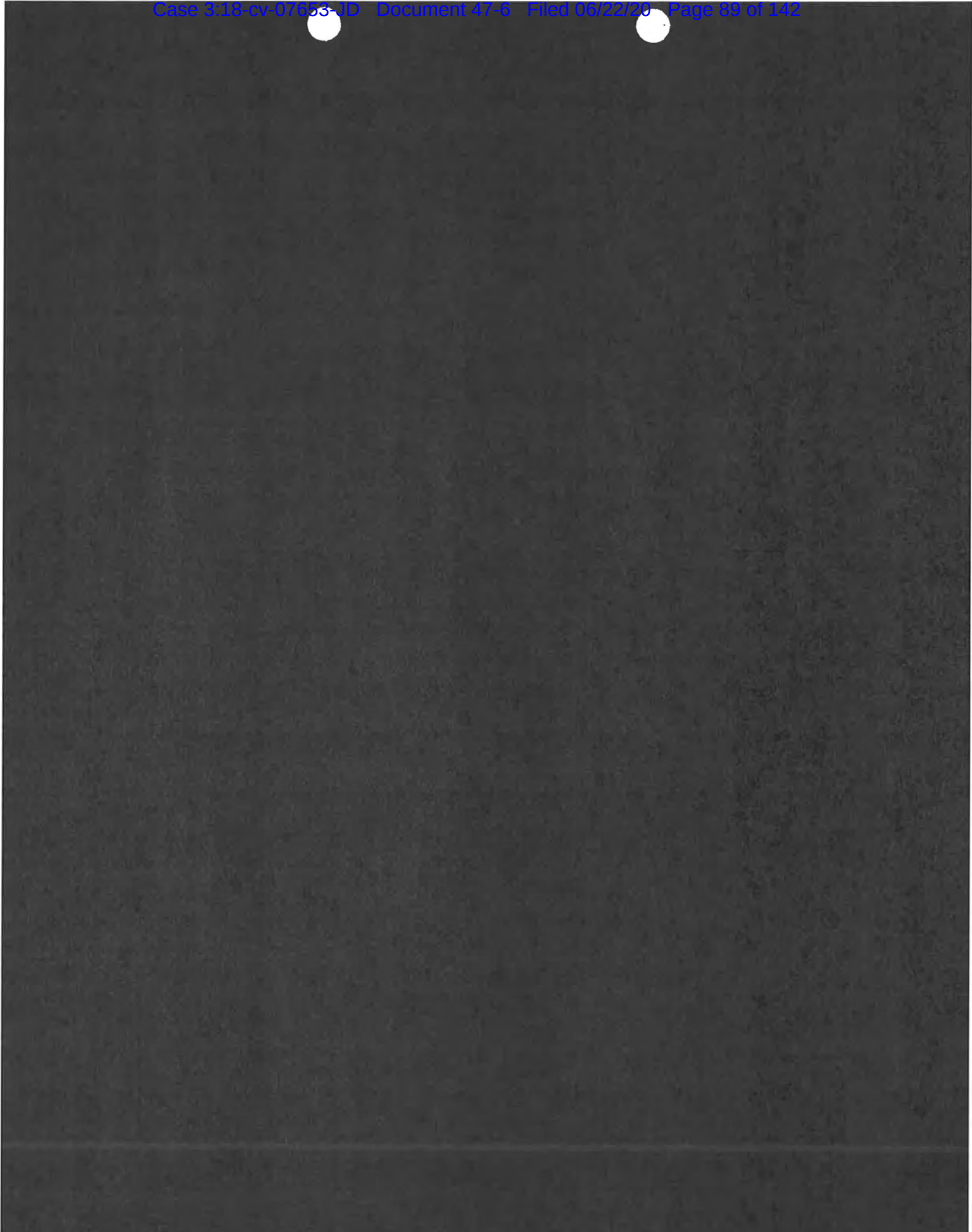
- Has made threats against the President of the United States or another elected official.
- When the purchaser or receiver identified on the DROS form answers YES to any of the questions on the DROS form, that person is deemed ineligible to purchase or receive that firearm, even if no record exists. **See Attachment 9**

### Mental Health Denial Categories:

- A person in any of the following categories is statutorily prohibited from purchasing firearms if he or she is:
  - A mental patient in a hospital or institution (WIC 8103)
  - A mental patient on leave of absence from a hospital or institution (WIC 8103)
  - A person adjudicated by the court to be a danger to self or others as a result of mental disorder or mental illness, after 10/01/1955, and if the person was not issued a Certificate of Relief (WIC 8103)
  - A person placed under a conservatorship (WIC 8103)
  - A person who is a mentally disordered sex offender (WIC 8103 and 6300)
  - A person found by the court to be mentally incompetent to stand trial pursuant to PC Sections 1370 and 1370.1 or the law of any state or the United States
  - A person who was admitted or certified under WIC 5150 is firearms *prohibited for 5 years* from the date of release; and
  - A person who was admitted or certified under a WIC 5250, 5260, 5270.15 is firearms *prohibited for life* (pursuant to 18 USC, 922(d)(4))

### Persons in the following categories are prohibited from purchasing firearms pursuant to Department policy:

- A person who has threatened the President of the United States or another elected official. If the Background Clearance Unit has documents on file indicating a person is in this category, the individual will be denied a firearms purchase; and
- A person who was reported to the DOJ as a mental patient or former mental patient pursuant to WIC Section 8105.





STATE OF CALIFORNIA



INDEXED LETTER

OFFICE OF THE ATTORNEY GENERAL

Department of Justice

110 WEST A STREET, SUITE 600  
SAN DIEGO, CALIFORNIA 92101

September 15, 1976

IL 76-184

REPLY CO. 76/31 16

Mr. J. J. Enomoto  
Director  
Department of Corrections  
714 P Street  
Sacramento, California 95814

Re: Opinion No. CR 76/31 I/L

Dear Mr. Enomoto:

In your letter of June 8, 1976, you requested our opinion on the following:

"What guidance may the department give to a person who successfully completes a course of rehabilitation at the California Rehabilitation Center when the criminal charges underlying the commitment to the Center are dismissed pursuant to Welfare and Institutions Code Section 3200 regarding the person's right to respond that he or she has not been convicted of a felony and regarding any disabilities that may remain?"

CONCLUSION

Welfare and Institutions Code section 3200 and Penal Code section 1203.4 neither expressly permit expungement of a criminal record nor affect the fact a conviction was suffered. A grant of relief under either Welfare and Institutions Code section 3200 or Penal Code section 1203.4 removes all penal and quasi-penal disabilities but affects no others. Therefore, these sections do not authorize one granted relief to deny he has been convicted of a felony.

NOT TO BE REPRODUCED IN OFFICIAL REPORTS  
OR TO CONSTITUTE A PUBLIC RECORD UNDER  
THE CALIFORNIA PUBLIC RECORDS ACT

OFFICE OF THE ATTORNEY GENERAL  
State of California

GEORGE DEUKMEJIAN  
Attorney General

-----  
OPINION

of

GEORGE DEUKMEJIAN  
Attorney General

PAUL H. DOBSON  
Deputy Attorney General

No. 80-411

JUNE 10, 1980

-----  
NELSON KEMPSKY, DIRECTOR, DIVISION OF LAW ENFORCE-  
MENT, DEPARTMENT OF JUSTICE, has requested an opinion on a  
question which we have phrased as follows:

May a person who has been convicted of a felony,  
the record of which is subject to destruction pursuant to  
Health and Safety Code section 11361.5, subdivision (b),  
purchase or possess a concealable handgun?

CONCLUSION

A person convicted of a felony, the record of which  
is subject to destruction pursuant to the provisions of  
Health and Safety Code section 11361.5, subdivision (b), may  
purchase or possess a concealable handgun.

ANALYSIS

It is unlawful for a person convicted of a felony  
to possess any pistol, revolver or other firearm capable  
of being concealed upon the person. (Pen. Code, § 12021.)  
It is also unlawful for any person to sell such a handgun  
to any person whom the seller has cause to believe to be  
a convicted felon. (Pen. Code, § 12072.)

Health and Safety Code section 11361.5 provides  
for the destruction of the arrest and conviction records  
of certain marijuana offenses. This section reads in



TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

JOHN K. VAN DE KAMP  
Attorney General

-----  
OPINION

of

No. 82-801

JOHN K. VAN DE KAMP  
Attorney General

OCTOBER 13, 1983

JACK R. WINKLER  
Assistant Attorney General

-----  
THE HONORABLE GEORGE DEUKMEJIAN, GOVERNOR OF CALIFORNIA, has requested an opinion on these questions:

1. ~~Does a presidential pardon of a federal felony conviction restore the recipient's privilege to possess concealable firearms in California?~~
2. Does a pardon by the governor of another state of a felony conviction in that state restore the recipient's privilege to possess concealable firearms in California?

CONCLUSIONS

1. ~~A full and unconditioned presidential pardon of a federal felony issued before June 19, 1968, restores the recipient's privilege to possess concealable firearms in California. A presidential pardon of a federal felony issued after June 19, 1968, does not restore the recipient's privilege to possess concealable firearms in California unless it expressly restores such privilege or is accompanied by an authorization to receive and possess firearms in commerce.~~

2. A pardon by the governor of another state of a felony conviction in that state does not restore the recipient's privilege to possess concealable firearms in California if the felony pardoned involved use of a dangerous weapon or for pardons of other felonies if the pardon does not expressly restore the recipient's privilege of possessing concealable firearms.

CCA

OFFICE OF THE ATTORNEY GENERAL  
State of California

THOMAS C. LYNCH  
Attorney General

OPINION

of

THOMAS C. LYNCH  
Attorney General  
JACK R. WINKLER  
Deputy Attorney General

No. 67/100

JUL 26 1987

THE HONORABLE JOSEPH L. HEENAN, DISTRICT ATTORNEY OF  
YUBA COUNTY, has requested an opinion on the following question:

May a Nevada felon, whose civil disabilities under  
Nevada law were removed in 1959 following his release from a  
Nevada prison, lawfully own or possess a concealable firearm in  
California?

The conclusion is:

Section 12021 of the California Penal Code prohibits  
ownership or possession of a concealable firearm in California  
by a Nevada felon whose civil disabilities under Nevada law  
were removed in 1959.





3. A person convicted by either the State of California, a sister state, or the federal government, who has received a grant of relief issued pursuant to 18 U.S.C. 925(c) is prohibited from possessing a concealable firearm by Penal Code section 12021.

#### ANALYSIS

Subdivision (a) of Penal Code 1/section 12021 states in relevant part that:

"Any person. . . who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, . . . who owns or has in his possession or under his custody or control any pistol, revolver, or other firearm capable of being concealed upon the person is guilty of a public offense. . . ."

Subdivision (b) of section 12021 provides an exception to the operation of subdivision (a) to persons convicted under the laws of the United States. It states that:

"Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless: (1) Conviction of a like offense under California law can only result in imposition of felony punishment; or (2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars (\$1,000), or received both such punishments."

Section 12021 by its express terms is applicable to one "who has been convicted of a felony." It does not provide for the exclusion of pardoned felons from its operation.

---

1. All section references are to the California Penal Code, unless otherwise specified.

# Memorandum

Date: February 28, 1977

From : Bureau of Identification

Subject: Federal Youth Corrections Act

The following information was obtained from Deputy Attorney General Nancy Sweet as a result of questions to her.



*Earl*

EARL P. BAUER, Section Manager  
Special Services

EB:at







## Background Clearance Unit DROS Procedures



### Firearms Prohibiting Categories

**State and federal law make it unlawful for certain persons to own and/or possess firearms, including:**

- Any person who is convicted of a felony, or any offense enumerated in Penal Code Sections 29900 or 29905 (*PC 12021.1*)
- Any person who is ordered to not possess firearms as a condition of probation or other court order listed in Penal Code section 29815, subdivision (a) and (b)
- Any person who is convicted of a misdemeanor listed in Penal Code section 29805 (refer to list of prohibiting misdemeanors) (*PC 12021(c)(1)*)
- Any person who is adjudged a ward of the juvenile court because he or she committed an offense listed in Welfare and Institution Code (WIC) section 707(b), an offense described in Penal Code section 1203.073(b), or any offense enumerated in Penal Code section 29805 (*PC 12021(c)(1)*)
- Any person who is subject to a temporary restraining order or an injunction issued pursuant to Code of Civil Procedures sections 527.6 or 527.8, a protective order as defined in Family Code section 6218, a protective order issued pursuant to Penal Code sections 136.2 or 646.91, or a protective order issued pursuant to WIC section 15657.03
- Any person who is found by a court to be a danger to himself, herself, or others because of mental illness
- Any person who is found by a court to be mentally incompetent to stand trial
- Any person who is found by a court to be not guilty by reason of insanity
- Any person who is adjudicated to be a mentally disordered sex offender
- Any person who is placed on a conservatorship because he or she is gravely disabled as a result of a mental disorder, or an impairment by chronic alcoholism
- Any person who communicates a threat to a licensed psychotherapist against a reasonably identifiable victim, that has been reported by the psychotherapist to law enforcement
- Any person who is taken into custody as a danger to self or others under WIC 5150, assessed under WIC section 5151, and admitted to a mental health facility under WIC sections 5151, 5152, or certified under WIC 5250, 5260 and 5270.15
- Any person who is addicted to the use of narcotics (state and federal)
- Any person who is under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year (federal)
- Any person who has been discharged from the military under dishonorably conditions (federal)
- Any person who is an illegal alien (federal)
- Any person who has renounced his or her US Citizenship (federal)
- Any person who is a fugitive from justice (federal)

**Note: Penal Codes in *italics* were used prior to 2012**



## Background Clearance Unit DROS Procedures



### Firearms Prohibiting Categories

**Firearm prohibitions for misdemeanor violations of the offenses listed below are generally for ten years from the date of conviction, but the duration of each prohibition may vary. All statutory references are to the California Penal Code, unless otherwise indicated.**

- Threatening public officers, employees, and school officials (PC 71)
- Threatening certain public officers, appointees, judges, staff, and their families with the intent and apparent ability to carry out the threat (PC 76)
- Intimidating witnesses or victims (PC 136.1)
- Possessing a deadly weapon with the intent to intimidate the witness (PC 136.5)
- Threatening witnesses, victims, or informants (PC 140)
- Attempting to remove or take a firearm from the person or immediate presence of a public or peace officer (PC 148(d))
- Unauthorized possession of a weapon in a courtroom, courthouse, or court building or at a public meeting (PC 171(b))
- Bringing into or possessing a load firearm within the state capitol, legislative offices, etc. (PC 171(c))
- Taking into or possessing loaded firearms within the Governor's Mansion or residence of other constitutional officers (PC 171(d))
- Supplying, selling, or giving possession of a firearm to a person for participation in criminal street gangs (PC 186.28)
- Assault (PC 240, 241)
- Battery (PC 242, 243)
- Sexual Battery (PC 243.4)
- Assault with a stun gun or taser weapon (PC 244.5)
- Assault with a deadly weapon other than a firearm, or with force likely to produce great bodily injury (PC 245)
- Assault with a deadly weapon or instrument; by any means likely to produce great bodily injury or with a stun gun or taser on a school employee engaged in performance of duties (PC 245.5)
- Discharging a firearm in a grossly negligent manner (PC 246.3)
- Shooting at an unoccupied aircraft, motor vehicle, or uninhabited building or dwelling house (PC 247)
- Inflicting corporal injury on a spouse or significant other (PC 273.5)\*\*
- Willfully violating a domestic protective order (PC 273.6)
- Drawing, exhibiting, or using deadly weapons other than a firearm (PC 417 (a)(1) or (a)(2))
- Inflicting serious bodily injury as a result of brandishing (PC 417.6)

**\*\* A "misdemeanor crime of domestic violence" (18 U.S.C. §§ 921(a)(33)(A), 922(g)(2))**





## Background Clearance Unit DROS Procedures



- Making threats to commit a crime which will result in death or great bodily injury to another person (PC 422)
- Bringing into or possessing firearms upon or within public schools and grounds (PC 626.9)
- Stalking (PC 646.9)
- Armed criminal action (PC 25800) (PC 12023)
- Possessing a deadly weapon with intent to commit an assault (PC 17500) (PC 12024)
- Driver of any vehicle who knowingly permits another person to discharge a firearm from the vehicle or any person who willfully and maliciously discharges a firearm from a motor vehicle (PC 26100 (b) or (d)) (PC 12034(b) or (d))
- Criminal possession of a firearm (PC 25300) (PC 12040)
- Firearms dealer who sells, transfers, or gives possession of any firearm to a minor or a handgun to a person under 21 (PC 27510) (PC 12072(b))
- Various violations involving sales and transfers of firearms (PC 27590(c)) (12072(g)(3))
- Person or corporation who sells any concealable firearm to any minor (PC 12100(a))
- Unauthorized possession/transportation of a machine gun (PC 32625) (PC 12220)
- Possession of ammunition designed to penetrate metal or armor (PC 30315) (PC 12320)
- Carrying a concealed or loaded firearm or other deadly weapon or wearing a peace officer uniform while picketing (PC 830.95(a), 17510(a)) (PC 12590)
- Bringing firearm related contraband into juvenile hall (WIC 871.5)
- Bringing firearm related contraband into a youth authority institution (WIC 1001.5)
- Purchase, possession, or receipt of a firearm or deadly weapon by a person receiving in-patient treatment for a mental disorder, or by a person who has communicated to a licensed psychotherapist a serious threat of physical violence against an identifiable victim (WIC 8100)
- Purchase, possession, or receipt of a firearm or deadly weapon by a person who has been adjudicated to be a mentally disordered sex offender or found to be mentally incompetent to stand trial, or not guilty by reason of insanity, and individuals placed under conservatorship (WIC 8103)

**The following misdemeanor convictions result in a lifetime prohibition:**

- Assault with a firearm (PC 29800(a)(1), PC 23515 (a)) (PC 12021(a)(1), 12001.6(2))
- Shooting at an inhabited or occupied dwelling house, building, vehicle, aircraft, or camper (PC 246, 29800(a)(1), 17510, 23515(b)) (PC 12021(a)(1), 12001.6(b))
- Brandishing a firearm in the presence of a peace officer (PC 417(c) 23515(d), 29800(a)(1)) (12001.6(d), 12021(a)(1))
- Two or more convictions of PC 417(a)(2) (PC 29800(a)(2)) (12021(a)(2))

**LEE EXHIBIT D**

1 George M. Lee (SBN 172982)  
gml@seilerepstein.com

2 **SEILER EPSTEIN LLP**  
275 Battery Street, Suite 1600  
3 San Francisco, CA 94111  
Phone: (415) 979-0500  
4 Fax: (415) 979-0511

Linton v. Becerra  
Exhibit 006

5 Attorneys for Plaintiffs  
6 CHAD LINTON, PAUL MCKINLEY STEWART,  
7 KENDALL JONES, FIREARMS POLICY FOUNDATION,  
8 FIREARMS POLICY COALITION,  
9 SECOND AMENDMENT FOUNDATION,  
10 CALIFORNIA GUN RIGHTS FOUNDATION and MADISON  
11 SOCIETY FOUNDATION

12 **UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA**

14 CHAD LINTON, et al.,

15 Plaintiffs,

16 vs.

17 XAVIER BECERRA, in his official capacity as  
18 Attorney General of California, et al.,

19 Defendants.

Case No. 3:18-cv-07653-JD

**FOURTH AMENDED NOTICE OF  
DEPOSITION OF THE CALIFORNIA  
DEPARTMENT OF JUSTICE [FRCP 30(B)(6)]**

**Exhibit**

**6**

Matsumoto 6/5/20

20 **NOTICE OF DEPOSITION**

21 TO ALL PARTIES, THROUGH THEIR COUNSEL OF RECORD:

22 PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil  
23 Procedure, plaintiffs Chad Linton, et al. (“plaintiffs”) will take the deposition of the CALIFORNIA  
24 DEPARTMENT OF JUSTICE (“DEPARTMENT”) on the subject matters set forth below, commencing  
25 on **Friday, June 5, 2020 at 9:00 a.m.** at the offices of SEILER EPSTEIN LLP, 275 Battery Street,  
26 Suite 1600, San Francisco, CA 94111. Pursuant to the agreement of the parties, the deposition  
27 will be conducted remotely via video conferencing. If the deposition is not completed on the  
28

1 date specified, the deposition shall continue from day to day, or to a date and time mutually  
2 agreeable to the deponent(s), the parties, and their counsel, until completed.

3 FURTHER TAKE NOTICE that the deposition will be taken before a notary public or  
4 other person authorized to administer oaths under applicable law, and will be conducted pursuant  
5 to Fed. Rule of Civ. Pro. 30. Pursuant to Rule 30(b)(3), the deposition testimony shall be  
6 recorded using audio, audiovisual and stenographic means; plaintiffs reserve the right to use the  
7 audio and video recordings of the deposition at the time of trial.

8  
9 SUBJECTS OF TESTIMONY

10 Pursuant to Fed. Rule of Civ. Pro. 30(b)(6), the DEPARTMENT shall identify, designate,  
11 and produce for deposition one or more officers, directors, managing agents or other person(s)  
12 most knowledgeable to testify on its behalf with regard to the following subjects:

13 1. The DEPARTMENT's policy or policies in denying out-of-state former felons the  
14 ability to purchase and/or possess firearms in the State of California when those felony  
15 convictions have been set aside or vacated in their respective states of origin;

16 2. The DEPARTMENT's treatment and interpretation of out-of-state felony convictions  
17 for purposes of determining whether a person is entitled to purchase or possess firearms in the  
18 State of California;

19 3. The DEPARTMENT's Background Clearance Unit's DROS procedures as set forth  
20 in the document entitled "Background Clearance Unit DROS Procedures," produced as  
21 AGO\_LINTON\_078 – AGO\_LINTON\_094;

22 4. The DEPARTMENT's procedures regarding all criminal history checks for the  
23 Dealer Record of Sale (DROS) system;

24 5. The DEPARTMENT's interpretation of plaintiff CHAD LINTON's criminal history  
25 in relation to his eligibility to purchase or possess firearms;

26 6. The DEPARTMENT's denial of plaintiff CHAD LINTON's attempt to purchase  
27 firearms;

28 7. The DEPARTMENT's interpretation of plaintiff PAUL McKINLEY STEWART's

1 criminal history in relation to his eligibility to purchase or possess firearms;

2 8. The DEPARTMENT's denial of plaintiff PAUL McKINLEY STEWART's attempt  
3 to purchase firearms;

4 9. The DEPARTMENT's interpretation of plaintiff KENDALL JONES's criminal  
5 history in relation to his eligibility to purchase or possess firearms; and

6 10. The DEPARTMENT's denial of plaintiff KENDALL JONES's application for a  
7 Certificate of Eligibility (COE).

8 ■ ■ ■

9 Pursuant to Fed. Rules of Civ. Pro. 30(b)(2) and 34(a), the DEPARTMENT's deponent(s)  
10 is/are requested to bring the following categories of documents for copying and inspection by the  
11 noticing parties as follows.

12  
13 DEFINITIONS

14 As used in this set of DOCUMENTS TO BE PRODUCED AT DEPOSITION, the following  
15 definitions shall apply:

16 "DEPARTMENT" shall refer to the California Department of Justice, and all divisions,  
17 bureaus, officials, officers, employees, investigators and agents working on its behalf, including  
18 but not limited to: Attorney General Xavier Becerra, the Office of the Attorney General, the  
19 Bureau of Firearms, the Background Clearance Unit, and all other subdivisions thereof.

20 "DOCUMENTS" shall refer to the term as used by FRCP(a)(1)(A), broadly defined to  
21 include all media on which information is recorded or stored, including but not limited to: all  
22 written typed, printed, recorded, tape-recorded, transcribed, graphic or other reproduced matter  
23 or memorialization in any form pertaining to or describing, referring or relating to, directly or  
24 indirectly, in whole or in part, the matter that is the subject of a particular request. If unable to  
25 be produced in hard copy form, then DOCUMENTS shall be produced in accessible form as  
26 ELECTRONICALLY STORED INFORMATION.

27 "ELECTRONICALLY STORED INFORMATION" or "ESI" shall refer to the term as used by  
28 FRCP(a)(1)(A), and shall include all DOCUMENTS, writings, drawings, graphs, charts,

1 photographs, sound recordings, images, and other data or data compilations stored in any  
2 medium from which information can be obtained. All ESI shall be produced in its original  
3 native format, and otherwise in a usable format that is readily accessible and reviewable to the  
4 requesting parties and their representatives.

5 “COMMUNICATIONS” shall refer to all DOCUMENTS and ESI consisting of and  
6 memorializing communications between individuals, entities and/or departments of any kind,  
7 including but not limited to: correspondence, letters, faxes, electronic mail messages (email),  
8 instant text or paper messages, interoffice electronic messaging, memoranda, notes,  
9 memorializations of conversations, and/or audio or video recordings of such communications.

10 “DROS” shall refer to Dealer Record of Sale. *See*, 11 Cal. Code Regs. § 4001, et seq.

11  
12 DOCUMENTS TO BE PRODUCED AT DEPOSITION

13 1. All DOCUMENTS pertaining to plaintiff Chad Linton’s criminal history and  
14 information, which formed the basis of any denial by the DEPARTMENT for the  
15 purchase/possession of firearms.

16 2. All COMMUNICATIONS and correspondence with plaintiff Chad Linton, and/or his  
17 legal representatives, that pertains, refers or relates to Mr. Linton’s eligibility to purchase or  
18 possess firearms in the State of California, and/or his status as an alleged prohibited person.

19 3. All DOCUMENTS, including internal COMMUNICATIONS within the DEPARTMENT,  
20 that refer or relate to plaintiff Chad Linton’s eligibility to purchase or possess firearms in the  
21 State of California.

22 4. Any and all DOCUMENTS which defendant Robert D. Wilson specifically  
23 consulted or relied upon in determining that plaintiff Chad Linton was ineligible to purchase or  
24 possess firearms in the State of California.

25 5. All DOCUMENTS reflecting or referring to the DEPARTMENT’s Armed Prohibited  
26 Persons System (APPS) enforcement operations undertaken as to and regarding plaintiff Chad  
27 Linton, including but not limited to: all databases cross-referenced by APPS for firearm  
28 association and prohibition determinations, reports of Mr. Linton’s eligibility, COMMUNICATIONS



SEILER EPSTEIN LLP  
Attorneys at Law

1 within the DEPARTMENT regarding Mr. Linton’s eligibility to own firearms, and all field and  
2 supervising agent reports submitted regarding the same.

3 6. All DOCUMENTS pertaining to plaintiff Paul McKinley Stewart’s criminal history  
4 and information, which formed the basis of any denial by the DEPARTMENT for the  
5 purchase/possession of firearms.

6 7. All COMMUNICATIONS and correspondence with plaintiff Paul McKinley Stewart,  
7 and/or his legal representatives, that pertains, refers or relates to Mr. Stewart’s eligibility to  
8 purchase or possess firearms in the State of California, and/or his status as an alleged prohibited  
9 person.

10 8. All DOCUMENTS, including internal COMMUNICATIONS within the DEPARTMENT,  
11 that refer or relate to plaintiff Paul McKinley Stewart’s eligibility to purchase or possess firearms  
12 in the State of California.

13 9. Any and all DOCUMENTS which defendant Robert D. Wilson specifically  
14 consulted or relied upon in determining that plaintiff Paul McKinley Stewart was ineligible to  
15 purchase or possess firearms in the State of California.

16 10. All DOCUMENTS constituting, referring or relating to the DEPARTMENT’s written  
17 policies in denying out-of-state former felons the ability to purchase and/or possess firearms in  
18 the State of California when those felony convictions have been set aside or vacated in their  
19 respective states of origin.

20 11. All DOCUMENTS constituting, referring or relating to the DEPARTMENT’s DROS  
21 procedures which pertain to the treatment of out-of-state felony convictions for purposes of  
22 determining whether a person is entitled to purchase or possess firearms in the State of  
23 California.

24 12. All DOCUMENTS constituting, referring or relating to the DEPARTMENT’s  
25 Background Clearance Unit’s DROS procedures that pertain to the treatment of all felony  
26 convictions that have been set aside, vacated, expunged, or subsequently reduced to  
27 misdemeanors.

28 //



1           13. All DOCUMENTS constituting, referring or relating to written opinions, memoranda  
2 or executive analyses by the Attorney General or the DEPARTMENT that pertain, refer or relate to  
3 the treatment of out-of-state felony convictions for purposes of determining whether a person is  
4 entitled to purchase or possess firearms in the State of California.

5           14. All DOCUMENTS pertaining to plaintiff Kendall Jones’s criminal history and  
6 information, which formed the basis of any denial by the DEPARTMENT for a Certificate of  
7 Eligibility (COE).

8           15. All COMMUNICATIONS and correspondence with plaintiff Kendall Jones, and/or  
9 his legal representatives, that pertains, refers or relates to Mr. Jones’s eligibility to purchase or  
10 possess firearms in the State of California, and/or his status as an alleged prohibited person.

11           16. All DOCUMENTS, including internal COMMUNICATIONS within the DEPARTMENT,  
12 that refer or relate to plaintiff Kendall Jones’s eligibility to purchase or possess firearms in the  
13 State of California.

14 Dated: May 29, 2020

**SEILER EPSTEIN LLP**

/s/ George M. Lee  
George M. Lee

Attorneys for Plaintiffs

**SEILER EPSTEIN LLP**  
Attorneys at Law

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I declare that I am over the age of eighteen years and that I am not a party to the above action. My business address is 275 Battery Street, Suite 1600, San Francisco, California 94111. On the date set forth below, I served the following document(s) on the parties in this action as follows:

**FOURTH AMENDED NOTICE OF DEPOSITION OF THE CALIFORNIA DEPARTMENT OF JUSTICE [FRCP 30(B)(6)]**

Service of said document(s) was accomplished in the following manner:

- By First Class Mail:** I placed each document listed above in sealed envelope(s), addressed to the recipient(s) set forth below, with pre-paid postage affixed thereto, and deposited said envelope(s) in a recognized place of deposit for collection and delivery by first class United States Mail.
- By Facsimile:** I caused each document to be transmitted to the recipient(s) set forth below at their respective facsimile numbers as indicated.
- By Personal Service:** I personally served each document listed above on the recipient(s) set forth below.
- By Courier/Messenger:** I placed each document listed above in a sealed envelope(s), addressed to the recipient(s) set forth below, and arranged personal delivery of the same through a messenger/courier service, for delivery to be accomplished on this date.
- By Overnight Express:** I placed each document listed above in a sealed envelope(s), addressed to the recipient(s) set forth below, and deposited said envelope(s) with an overnight courier service, for delivery to be accomplished the next business day.
- By Email:** I caused true and correct copies of the above document(s) to be sent via email to the addressee(s) on this date.

Said documents were addressed/delivered to the following recipients:

Maureen C. Onyeagbako  
Deputy Attorney General  
OFFICE OF THE ATTORNEY GENERAL  
1300 I Street, Suite 125  
Sacramento, CA 94244-2550  
Email: [maureen.onyeagbako@doj.ca.gov](mailto:maureen.onyeagbako@doj.ca.gov)

I declare under penalty of perjury that the foregoing is true and correct. Executed May 29, 2020, at San Francisco, California.

/s/ \_\_\_\_\_  
GEORGE M. LEE

**SEILER EPSTEIN LLP**  
Attorneys at Law

**LEE EXHIBIT E**

4CLNG177379.I\*

FR.WAWSP0000  
09/07/2018 11:08 09937  
09/07/2018 11:08 20470 CA0349440  
\*CLNG0T4W02DJOO25F20J559000005QM  
TXT

FR.WAWSP0000.CA0349440..  
PUR/C.ATN/[REDACTED].SID/WA[REDACTED]  
PAGE 1  
FQ.CA0349440.11:0809/07/20182256111:0809/07/201815312WA \*CLNGD9HWXQTXTPUR/C.  
ATN/[REDACTED].SID/WA[REDACTED]

ATN/[REDACTED]  
WASHINGTON STATE CRIMINAL HISTORY RECORD FOR SID/WA13700861  
WASHINGTON STATE PATROL  
CRIMINAL HISTORY RECORD SECTION  
P.O. BOX 42633  
OLYMPIA, WASHINGTON 98504-2633

\*\*\*\*\*  
CRIMINAL HISTORY INFORMATION AS OF 09/07/2018  
\*\*\*\*\*

NOTICE

THE FOLLOWING TRANSCRIPT OF RECORD IS FURNISHED FOR OFFICIAL USE ONLY.  
SECONDARY DISSEMINATION OF THIS CRIMINAL HISTORY RECORD INFORMATION IS  
PROHIBITED UNLESS IN COMPLIANCE WITH THE WASHINGTON STATE CRIMINAL RECORDS  
PRIVACY ACT, CHAPTER 10.97 RCW.

POSITIVE IDENTIFICATION CAN ONLY BE BASED UPON FINGERPRINT COMPARISON. BECAUSE  
ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY SHOULD BE REQUESTED  
FOR SUBSEQUENT USE. WHEN EXPLANATION OF A CHARGE OR DISPOSITION IS NEEDED,  
COMMUNICATE DIRECTLY WITH THE AGENCY THAT SUPPLIED THE INFORMATION TO THE  
WASHINGTON STATE PATROL.

\*\*\*\*\*  
MASTER INFORMATION  
\*\*\*\*\*

NAME: LINTON, CHAD J DOB: 07/05/[REDACTED]  
SID NUMBER: WA[REDACTED] FBI NUMBER: [REDACTED]

\*\*\*\*\*  
PERSON INFORMATION  
\*\*\*\*\*

SEX RACE HEIGHT WEIGHT EYES HAIR PLACE OF BIRTH CITIZENSHIP  
M W 510 155 BLU BLN CA

OTHER NAMES USED OTHER DATES OF SOC SEC MISC NUMBER  
BIRTH USED NUMBER  
[REDACTED]

DNA TAKEN: N DNA TYPED: N

\*\*\*\*\*  
NO KNOWN SCARS, MARKS, TATTOOS, AND AMPUTATIONS  
\*\*\*\*\*

\*\*\*\*\*  
CONVICTION AND/OR ADVERSE FINDING SUMMARY  
\*\*\*\*\*

0 FELONY(S)  
DATE

DISPOSITION

1 GROSS MISDEMEANOR(S)  
DRIVING UNDER THE INFLUENCE  
0 MISDEMEANOR(S)

12/29/1987

0 CLASSIFICATION(S) UNKNOWN

\*\*\*\*\*  
\*\*\*\* NO KNOWN DOC SUMMARY INFORMATION \*\*\*\*  
\*\*\*\*\*

\*\*\*\*\*  
CRIMINAL HISTORY INFORMATION  
\*\*\*\*\*  
THE ARRESTS LISTED MAY HAVE BEEN BASED ON PROBABLE CAUSE AT THE TIME OF ARREST  
OR ON A WARRANT. PROBABLE CAUSE ARRESTS MAY OR MAY NOT RESULT IN THE FILING OF  
CHARGES. CONTACT THE ARRESTING AGENCY FOR INFORMATION ON THE FORMAL CHARGES  
AND/OR DISPOSITIONS.

ARREST 1  
08/20/1987

DATE OF ARREST:

NAME USED: LINTON, CHAD J  
CONTRIBUTING AGENCY: WA0150000 ISLAND COUNTY SHERIFFS OFFICE  
LOCAL ID: 14324 PCN: N/A TCN: N/A

ARREST OFFENSES  
07618 ATTEMPT TO ELUDE  
RCW: 46.61.024  
SUPERIOR  
CLASS C FELONY  
ORIGINATING AGENCY: WA0150000  
ISLAND COUNTY SHERIFFS OFFICE  
DISPO RESPONSIBILITY: WA015025J  
DATE OF OFFENSE: 08/20/1987  
  
07644 DRIVING UNDER THE INFLUENCE  
RCW: 46.61.502  
GROSS MISDEMEANOR  
ORIGINATING AGENCY: WA0150000  
ISLAND COUNTY SHERIFFS OFFICE  
DISPO RESPONSIBILITY: WA015025J  
DATE OF OFFENSE: 08/20/1987

DISPOSITION  
CONTRIBUTOR OR RESPONSIBLE AGENCY:  
WA015025J ISLAND COUNTY  
  
COURT  
COURT CASE NO: 871000649  
  
STATUS: VACATED  
07618 ATTEMPT TO ELUDE  
RCW: 46.61.024  
CLASS C FELONY  
STATUS DATE: 03/21/2016  
  
SENTENCE: SENT. DESC.:  
CHG 01: JAIL - 7 DS, COMM  
SUPV - 1 YR  
  
STATUS: GUILTY  
07644 DRIVING UNDER THE

*NOT RECOGNIZED CA!*

INFLUENCE

RCW: 46.61.502  
GROSS MISDEMEANOR  
STATUS DATE: 12/29/1987

SUBSEQUENT DISPOSITION: RIGHT

TO

POSSESS A FIREARM RESTORED  
DATE: 04/18/2016  
ORI: WA015015J  
COMMENT: 162001968, 9.41.040(4)

\*\*\*\*\*

NO KNOWN DEPARTMENT OF CORRECTIONS INFORMATION

\*\*\*\*\*

\*\*\*\*\*

NO KNOWN SEX/KIDNAPPING OFFENDER REGISTRATIONS

\*\*\*\*\*

\*\*\*\*\*

NO KNOWN APPLICANT DETAILS

\*\*\*\*\*

\*\*\*\*\*

NO KNOWN MONITORED POPULATION REGISTRATION TRACKING INFORMATION

\*\*\*\*\*

\*\*\*\*\*

GLOSSARY OF TERMS IS AVAILABLE IN THE CRIMINAL JUSTICE TRAINING MANUAL (CJTM)  
LOCATED AT [HTTP://WWW.WSP.WA.GOV/\\_SECURED/IDENT/RESOURCE.HTM](http://www.wsp.wa.gov/_secured/ident/resource.htm)

\*\*\*\*\*

RESOURCES

\*\*\*\*\*

ADMINISTRATIVE OFFICE OF

THE COURTS (AOC)-----[WWW.COURTS.WA.GOV](http://www.courts.wa.gov)

WSP CRIMINAL HISTORY

RECORDS SECTION-----[CRIMHIS@WSP.WA.GOV](mailto:CRIMHIS@WSP.WA.GOV) OR (360) 534-2000

WSP CRIMINAL HISTORY &

FINGERPRINT TRAINING-----

[HTTP://WWW.WSP.WA.GOV/\\_SECURED/IDENT/RESOURCE.HTM](http://www.wsp.wa.gov/_secured/ident/resource.htm)

DEPARTMENT OF CORRECTIONS (DOC)---[WWW.DOC.WA.GOV](http://www.doc.wa.gov)

WSP SEX/KIDNAPPING

OFFENDER REGISTRY (SOR) UNIT--(360) 534-2000

REVISED CODE OF WASHINGTON (RCW)--[HTTP://APPS.LEG.WA.GOV/RCW/](http://apps.leg.wa.gov/rcw/)

WSP WASHINGTON ACCESS TO CRIMINAL

HISTORY (WATCH) WEBSITE-----<https://fortress.wa.gov/wsp/watch>

WSP IDENTIFICATION AND

BACKGROUND CHECK SECTION-----[WATCH.HELP@wsp.wa.gov](mailto:WATCH.HELP@wsp.wa.gov) OR (360) 534-2000

END OF RECORD

*in*

**LEE EXHIBIT F**



**DROS Denial**

**DROS Number**

[REDACTED]

**Last**

STEWART

**First**

PAUL

**Middle**

MCKINLEY

**Suffix**

**Transaction Type**

DEALER SALE

**Analyst**

[REDACTED]

Longgun

Back

Notification(s)    Comments    Control Number(s)    Reason(s)

Date/Time Notified	Method of Notification	Person Notified	Notification Comment
02/27/2018 02:14:46 PM	MAIL	MAIL	FBI/[REDACTED] 1976 FEL BURG CONV, 13-907 GRANTED 8/11/16, NOT RECOGNIZED IN CA/AT
02/27/2018 02:14:59 PM	OTHER	N/A	SEE COMMENTS

**LEE EXHIBIT G**

## CERTIFICATION OF CRIMINAL HISTORY RECORD INFORMATION

STATE OF TEXAS  
COUNTY OF TRAVIS

Pursuant to the authority contained in Rule 902, Sections 1 and 4, Texas Rules of Evidence, and Subchapter F, Chapter 411, Texas Government Code, I, Tanya Wilson, Supervisor, Criminal History Inquiry Unit, Access and Dissemination Bureau, Crime Records Service, Texas Department of Public Safety, do hereby certify I am the deputy custodian of the criminal history record information of Crime Records Service of the Texas Department of Public Safety. I further certify the attached 3 pages(s) are a true and correct copy of the records on file at the Texas Department of Public Safety, that I am legally authorized to produce, for the following:

Texas SID: [REDACTED]

TEXAS CRIMINAL HISTORY RECORD  
**JONES, KENDALL D**  
Date of Birth: [REDACTED]



In Testimony Whereof, I hereunto set my hand and affix the seal of the Texas Department of Public Safety. Done at my office in Austin, Texas on this 6th day of April, 2019.

Tanya Wilson, Supervisor  
Criminal History Inquiry Unit  
Access and Dissemination Bureau  
Crime Records Service  
Texas Department of Public Safety

**Exhibit**

**16**

Matsumoto 6/5/20

**Linton v. Becerra**  
**Exhibit 016**

## TEXAS DEPARTMENT OF PUBLIC SAFETY

## CRIMINAL HISTORY



The information contained in this record reflects only information contained in the Computerized Criminal History database maintained by the Texas Department of Public Safety. Contact the contributing agency for specific or additional information regarding charges or dispositions. The contents of this record are confidential and intended for dissemination only to criminal agencies or other individuals or agencies authorized by law to receive criminal history record information. UNAUTHORIZED USE OR DISCLOSURE OF THE INFORMATION CONTAINED IN THIS RECORD MAY RESULT IN SEVERE CRIMINAL PENALTIES. SEE SECTION 411.085 OF THE TEXAS GOVERNMENT CODE.

CRIME RECORDS SERVICE  
P.O. BOX 4143  
AUSTIN, TEXAS 78765-4143  
PHONE 512-424-5079

TEXAS DEPARTMENT OF PUBLIC SAFETY COMPUTERIZED CRIMINAL HISTORY (Version 0.38 pdf)

THE FOLLOWING RECORD PERTAINS TO DPS NUMBER TX 02751758

## NAME(S)

JONES, KENDALL DWAYNE  
JONES, KENDALL (AKA)



## FBI NUMBER

[REDACTED]

## DPS NUMBER

[REDACTED]

## SOCIAL SECURITY

[REDACTED]

## DRIVERS LICENSE

[REDACTED]

## ID NUMBER

## SEX

MALE

## RACE

BLACK

## SKIN TONE

UNKNOWN

## HEIGHT

602

## WEIGHT

220

## DATE OF BIRTH

## HAIR COLOR

UNKNOWN OR COMPLETELY BALD

## EYE COLOR

BROWN

## FINGERPRINT PATTERN

## HENRY CLASS

5 S 1 U III 16 MSS

S 1 U OOI MLM

## PLACE OF BIRTH

CA

## CITIZEN

US

## SCARS, MARKS, AND TATTOOS

BALD

## ALIAS DOB

## DNA

N

## DATE OF REPORT

04-06-2019

## ORIGINATION DATE

07-16-1980

## DATE OF LAST UPDATE

04-05-2019

## EVENT CYCLE 1

## ARREST DATE

1980-06-25

## TYPE

ADULT

## AGENCY

TXHPD0000 - HOUSTON POLICE DEPARTMENT

## TRACKING SUFFIX

\*001

## OFFENSE DATA

## AGENCY ID NUMBER

343919

## OFFENSE DATE

1980-04-20

## ARREST OFFENSE

FRAUD-ILLEG USE CREDIT CARDS

## CITATION

X X



OFFENSE DESC CREDIT CARD ABUSE

-----  
PROSECUTION DATA

PROSECUTION AGENCY TX101015A - DISTRICT ATTORNEYS OFFICE HOUSTON  
ACTION PROSECUTOR HAS CHANGED THE CHARGE  
PROSECUTOR OFFENSE FRAUD-ILLEG USE CREDIT CARDS  
CITATION X X  
OFFENSE DESC CREDIT CARD ABUSE  
LEVEL & DEGREE FELONY - 3RD DEGREE

-----  
COURT DATA

COURT AGENCY TX101225J - 180TH DISTRICT COURT HOUSTON  
COURT OFFENSE FRAUD-ILLEG USE CREDIT CARDS  
CITATION X X  
OFFENSE DESC CREDIT CARD ABUSE  
LEVEL & DEGREE FELONY - 3RD DEGREE  
DISPOSITION CONVICTED  
DISPOSITION DATE 1980-08-22  
SENTENCE DATE 1980-08-22  
CAUSE NUMBER 031702001010  
FINAL PLEADING GUILTY  
CONFINEMENT P3Y  
SUSPENDED TIME P3Y  
PROBATION P3Y  
FINE 350  
COURT COST 76  
RECEIVING CUSTODY TX101035G - COMMUNITY SUPERVISION & CORRECTIONS DEPARTMENT

-----  
COURT DATA

COURT AGENCY TX101225J - 180TH DISTRICT COURT HOUSTON  
COURT OFFENSE FRAUD-ILLEG USE CREDIT CARDS  
CITATION X X  
OFFENSE DESC CREDIT CARD ABUSE  
LEVEL & DEGREE FELONY - 3RD DEGREE  
DISPOSITION DISMISSED  
DISPOSITION DATE 1980-08-22  
SENTENCE DATE 1983-08-22  
CAUSE NUMBER 031702001010  
FINAL PLEADING UNREPORTED/OR UNKNOWN  
PROVISION SET ASIDE

-----  
EVENT CYCLE 2

TRACKING NUMBER 0117670855  
ARREST DATE 1981-12-16  
TYPE ADULT  
AGENCY TX1010000 - HARRIS CO SO HOUSTON  
NAME JONES,KENDALL DWAYNE

-----  
TRACKING SUFFIX A001

-----  
OFFENSE DATA

AGENCY CASE NUMBER FP2130314830  
OFFENSE AGENCY TX1010000 - HARRIS CO SO HOUSTON  
OFFENSE DATE 1981-12-16  
ARREST OFFENSE UNLAWFUL CARRYING WEAPON  
CITATION PC 46.02(a)  
LEVEL & DEGREE MISDEMEANOR - CLASS A  
DISPOSITION BAIL/RELEASED ON OWN RECOGNIZANCE  
DISPOSITION DATE 1981-12-16  
REFERRED TX101015A - DISTRICT ATTORNEYS OFFICE HOUSTON

-----  
NO PROSECUTION DATA AVAILABLE

-----  
COURT DATA

<b>COURT OFFENSE</b>	UNLAWFUL CARRYING WEAPON
<b>CITATION</b>	PC 46.02(a)
<b>LEVEL &amp; DEGREE</b>	MISDEMEANOR - CLASS A
<b>DISPOSITION</b>	CONVICTED
<b>DISPOSITION DATE</b>	1981-12-16
<b>SENTENCE DATE</b>	1981-12-16
<b>CAUSE NUMBER</b>	063141101010
<b>FINAL PLEADING</b>	UNREPORTED/OR UNKNOWN
<b>CONFINEMENT</b>	P25D
<b>RECEIVING CUSTODY</b>	TX1010000 - HARRIS CO SO HOUSTON

---

NO CUSTODY

EVENTS -----

UNAUTHORIZED USE OR DISCLOSURE OF THE INFORMATION CONTAINED IN THIS RECORD MAY RESULT IN SEVERE CRIMINAL PENALTIES. SEE TEXAS GOVERNMENT CODE SECTION 411.085.  
END OF REPORT

**LEE EXHIBIT H**



[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Thursday, March 22, 2018 12:35 PM  
**To:** [REDACTED]  
**Subject:** Kendall Jones FW: dismissal restore firearm rights in TX

fyi

**From:** NICS\_LegalResearch [mailto:NICS\_LegalResearch@FBI.GOV]  
**Sent:** Thursday, March 22, 2018 12:16 PM  
**To:** [REDACTED]@doj.ca.gov>  
**Subject:** RE: dismissal restore firearm rights in TX

[REDACTED]

The completion of probation in Texas followed up by a subject receiving a conviction set aside is not a ROR but it does remove the conviction. The DOA would no longer be prohibiting for firearms purposes.

Thanks

David A. Fazzini  
Legal Administrative Specialist  
FBI National Instant Criminal Background Check System (NICS) Section  
[david.fazzini@ic.fbi.gov](mailto:david.fazzini@ic.fbi.gov)  
(304) 625-7194

This response is case-specific and is based on the information you provided. Variance in the substance of the information you provided, either by adding, modifying, or omitting any detail, may change the accuracy of this response as it applies to your request. This message has been transmitted to you by the FBI Criminal Justice Information Services Division's National Instant Criminal Background Check System Section. The message, along with any attachments, is to be considered confidential and legally privileged. No part of it is to be disseminated or reproduced without written consent of the sender. If you are not the intended recipient of this message, please destroy it promptly without any retention, dissemination, or reproduction (unless required by law), and please notify the sender of the error immediately by separate e-mail or by calling (304) 625-7194.

**From:** [REDACTED]@doj.ca.gov>  
**Sent:** Thursday, March 22, 2018 2:44 PM  
**To:** [NIC\\_LegalResearch@fbi.gov](mailto:NIC_LegalResearch@fbi.gov); NICS\_LegalResearch <[NICS\\_LegalResearch@FBI.GOV](mailto:NICS_LegalResearch@FBI.GOV)>  
**Subject:** dismissal restore firearm rights in TX

Hello,

I am in need of clarification of a TX SID TX [REDACTED] (see attached KendallJones pdf) felony conviction of credit card abuse in the third degree in which the person later after completing his probation received a dismissal and judgment of conviction set aside ( see kendall jones CORR pdf pg 6) I would like to know does this dismissal restore firearms rights in TX ?

Thank you.

[REDACTED]  
Staff Services Analyst  
Department of Justice Bureau of Firearms  
Licensing & Certificate of Eligibility Section  
Ph# ([REDACTED])  
Fax# [REDACTED]



**CONFIDENTIALITY NOTICE:** This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

**LEE EXHIBIT I**

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Thursday, March 22, 2018 8:41 AM  
**To:** [REDACTED]  
**Subject:** Kendall Jones

[REDACTED]

**From:** [REDACTED] [mailto:[REDACTED]@dps.texas.gov]  
**Sent:** Thursday, March 22, 2018 5:42 AM  
**To:** [REDACTED]@doj.ca.gov>  
**Subject:** RE: Request for information

[REDACTED]

I included all the court documents pertaining to the case and the individual does not have a governors pardon; however the case was dismissed and set aside. That is why the Status flag was changed from disqualified to unknown. **The court documents do not show just a dismissal, but a dismissed and set aside.**

Please call me directly if you have further questions.

I have been out of the office the past two days due to illness, I am in the office the rest of the week. I work 7:15am - 4:15pm CST.

[REDACTED]  
(phone)  
(fax)



**From:** [REDACTED] [mailto:[REDACTED]@doj.ca.gov]  
**Sent:** Wednesday, March 21, 2018 1:22 PM  
**To:** [REDACTED]  
**Subject:** RE: Request for Information

**CAUTION:** This email was received from an EXTERNAL source, use caution when clicking links or opening attachments.

**LEE EXHIBIT J**

**Arizona Terminology Page**

Last Updated:

Monday, July 06, 2015

Terminology	Updates		Definition of Terminology	Application of Terminology
	Date	Initials		
<b>Adult Diversion Program</b>	04/11/07		The adult diversion program is a project established by the county attorney's office. Successful completion of the program results in felony charges being dismissed with prejudice. May be under indictment or information.	<b>Needs further research.</b>
<b>Arrest Scratched</b>	03/26/07	mjz	Means no complaint filed. The same as a dismissal.	<b>Final disposition. This is not a conviction.</b>
<b>Bond Forfeiture</b>			Proceeding where individual's appearance bond is forfeited upon judicial finding of failure to appear after receipt of notice.	<b>This is not a final disposition; needs researched.</b>
<b>Closed Record</b>	04/29/09	mjz	In some instances, courts order certain documents or portions of documents sealed, meaning they are unavailable to the public. Additionally, all juvenile court proceedings are closed to the public.	<b>Needs further research.</b>
<b>Conditional Release</b>			Released for purpose preparatory to return to the community and/or work furlough (see A.R.S. 41-1604.11).	<b>This is a conviction.</b>
<b>Deferred Jail</b>			Deferred jail is a jail term to be served in the county jail that is a condition of probation. Further, the jail term cannot exceed one year. Deferred jail is imposed at sentencing, but often does not begin for a period of time which allows the court to monitor the probationer's performance. It can be deferred, deleted, or modified at the court's discretion. It is commonly used as an incentive device to ensure compliance with the terms of probation.	<b>This is a conviction.</b>
<b>Deferred Proceedings</b>	10/05/11	mjz	AZ ST 13-3601(M) (repealed 7/1/04). For first time MCDV conviction with probation prior to 7/1/04.	<b>A domestic violence misdemeanor who has not yet successfully completed probation after Deferred proceedings under 13-3601(M) is considered convicted during the probationary period and is subject to Federal and state firearm disabilities. If the probation is successfully completed and dismissed, it is not a conviction and is not subject to Federal and state firearm disabilities.</b>

AGO\_LINTON\_214



Arizona Terminology Page

Last Updated:

Monday, July 06, 2015

Terminology	Updates		Definition of Terminology	Application of Terminology
	Date	Initials		
<b>Deferred Prosecution</b>	10/5/2011	mjz	After the filing of a complaint, indictment, or information, but prior to a plea of guilty or trial, the subject enters a written agreement between the prosecutor and the defendant that if certain conditions are met, charges will be dismissed. During the deferred prosecution, the individual is ALWAYS under indictment until successful completion of the deferred prosecution. Therefore, the individual is federally prohibited while serving the deferred prosecution. This applies to charges that are disqualifying under 922(n).	<p>This is not a conviction for misdemeanors, but all active misdemeanor deferrals need researched for firearm restrictions.</p> <p>This is not a conviction for felonies, but the individual is always under indictment during active deferrals.</p> <p>A successfully completed deferred prosecution is not a conviction and is not disqualifying for firearms.</p>
<b>Deferred Sentence</b>	04/03/12	JFK	The sentence can either be deferred after an adjudication of guilt which is a conviction OR the PLEA can be deferred without an adjudication (whether the sentence is deferred or not) it is NOT a conviction. Therefore, research is required to determine if there was an adjudication of guilt.	Needs researched.
<b>Dismissed</b>			<b>Dismissed is a final disposition.</b>	<b>This is not a conviction.</b>
<b>Dismissed Per D.V. Statute</b>	10/05/11	mjz	See Deferred Proceedings	See Deferred Proceedings
<b>Dismissed With Prejudice</b>			The case is removed from the court's docket and can no longer be re-filed.	This is not a conviction.
<b>Dismissed Without Prejudice</b>	03/12/13	rhd	The case is removed from the court's docket but may be refiled at a later date	This is not a conviction. This is a final disposition (unless the charge is refiled)
<b>Expungement</b>	01/09/14	JFK	An expungement under AZ law does not destroy the record of disposition, See Op. Atty. Gen. 73-3-L and Russell v. Royal Maccabees Life Ins. Co., 193 Ariz. 464, 974 P.2d 443, 268 Ariz. Adv. Rep. 51, Ariz.App. Div. 1, May 07, 1998 (NO. 1CA-CV 97-0157).	This is not a true expungement for NICS purposes. NOTE: If record indicates "Set-Aside" and "Expunged," see Set-Aside

AGO\_LINTON\_215



**Arizona Terminology Page**

Last Updated:

Monday, July 06, 2015

Terminology	Updates		Definition of Terminology	Application of Terminology
	Date	Initials		
Juvenile Adjudication	03/14/14	JFK	Adjudicated as a juvenile for an offense that, if committed by an adult, would be a felony.	This is not a conviction. This is an AZ State Prohibitor UNLESS restoration of firearm rights granted.
No Complaint Filed			This is a final disposition.	This is not a conviction.
No Contest	09/20/06	mjz	A plea by a defendant that he will not dispute the charge.	This is a conviction.
Nolle Prosequi			This is a final disposition.	This is not a conviction.
Nolo Contendere	09/20/06	mjz	See No Contest	This is a conviction.
Pretrial Diversion	04/12/10	mjz	After charges are filed, a written agreement is entered into by the prosecutor and the defendant, whereupon if certain conditions are met by the defendant, the charges are dismissed.	If dismissal is on the criminal history record no further research is needed. If dismissal is not on the criminal history record, further research is needed to confirm dismissal. A successfully completed pretrial diversion is not a conviction and is not disqualifying for firearms.
Set Aside (1) - Set Aside Per AZ ST 13-907 issued PRIOR TO JULY 3, 2015 OR Issued anytime if the conviction was for a "Serious Offense" (See Definition of Set Aside 2 in entry below for serious offenses)	07/06/15	JFK	A prohibiting conviction set aside under A.R.S. 13-907 removes the firearms prohibition UNLESS <u>either</u> of the following apply: (1) A federal prohibition would remain if the order contains specific language that the person is not relieved of firearm disabilities (2) For a felony conviction, an <u>AZ state prohibition</u> remains if subject has not been "restored" under AZ law. An AZ set aside alone (without a specific firearm restoration) is not a restoration for purposes of AZ state prohibition. The required restoration can be either automatic (see automatic ROR) or court ordered by a provision of the set aside itself or separate court order.	If set aside under 13-907 and "firearm rights restored" is listed on the criminal history record, this removes the federal and AZ prohibition for this offense.  If set aside under 13-907 is listed but "firearm rights restored" is not listed on the record, the set aside documentation must be obtained and reviewed to determine if this restores federal and AZ firearms rights.  * A set aside/vacate order can only be issued after a sentence completion and therefore also verifies sentence completion has occurred on or before the date of the set aside.

AGO\_LINTON\_216

Arizona Terminology Page

Last Updated:

Monday, July 06, 2015

Terminology	Updates		Definition of Terminology	Application of Terminology
	Date	Initials		
Set Aside (2) - Set Aside Per AZ ST 13-907 issued ON OR AFTER JULY 3rd, 2015 IF the underlying conviction was not for a 'serious offense'	07/06/15	JFK	Firearm rights must be restored unless the conviction was for a 'Serious Offense' - which includes (all inclusive list) - (a) First Degree Murder (b) Second Degree Murder (c) Manslaughter (d) Aggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument (e) Sexual Assault (f) Any dangerous crime against children (g) Arson of an occupied structure (h) Armed Robbery (I) Burglary in the first Degree (j) Kidnapping (k) Sexual conduct with a minor under fifteen years of age (l) Child prostitution	Removes both federal and AZ state prohibitions for this offense.
Suspended Imposition of Sentence			This occurs when a judge grants probation instead of sentencing a defendant to prison.	This is a conviction.
Suspended Prosecution			After the filing of a complaint, indictment, or information, but prior to a plea of guilty or trial, the prosecutor determines that it would serve the ends of justice to suspend further prosecution of a defendant so that he or she could participate in a deferred prosecution program. If conditions are not satisfied prosecution can resume and subject can subsequently be convicted. Refer to DEFERRED PROSECUTION.	This is not a conviction, but the subject is under indictment or information while participating in the program. Needs research for completion.
Suspended Sentence			Imposition of jail and/or prison term is suspended and individual placed on probation.	This is a conviction.
Vacated	10/11/10	mjz	See Set-Aside	See Set-Aside

AGO\_LINTON\_217

**LEE EXHIBIT K**

**Texas Terminology Page**

Last Updated:

Saturday, December 16, 2017

Terminology	Updates		Definition of Terminology	Application of Terminology
	Date	Initials		
Bond Forfeiture	04/24/14	bab	The defendant has failed to appear as required by the conditions of his release on his bond, and the bond has been forfeited. Chapter 22, Texas Code of Criminal Procedure.	<b>This is not a conviction.</b>
Case Retired			This shows the case was removed from the docket until information is received that shows there is evidence to proceed with the charges or dismiss the charges.	<b>This is not a final disposition.</b>
Cleared Record			Resulting in an indictment or under information being dismissed or quashed, or an acquittal or pardon being received and the arrest or criminal record is expunged	<b>This is not a conviction.</b>
Clemency	03/25/13	bab	"Executive Clemency." This relieves persons convicted of a felony of all or any part of their term of imprisonment	<b>Additional research is required to determine if there is a full pardon, a partial pardon or conditional pardon. Only the full pardon absolves individuals from all legal consequences of the conviction. See Carr v. State, 19 Tex. Ct. App. 635 (1885); Overruled in part by Lundstrom V. State, 742 S.W.2d 279, 287.</b>
Clemency Discharge/Early Release	04/24/14	bab	Subject has received clemency discharge. Can also be called early release.	<b>This remains a conviction.</b>
Deferred/Deferred Adjudication	04/24/14	bab	The finding of guilt has been postponed. Under TX Art 42.12: The judge may, after hearing a plea of guilty or a plea of nolo contendere, defer the proceedings without entering an adjudication of guilt and place the defendant on probation. This is commonly referred to as Deferred Adjudication, Deferred Probation or Deferred Sentence.	<b>This is not a conviction, but refers to a pending charge which may be dismissed if the defendant satisfied the conditions of an agreement with the state. If it has been determined that the probation has been completed (successful or unsuccessful), this is not considered a conviction.</b>

AGO\_LINTON\_227



**Texas Terminology Page**

Last Updated:

Saturday, December 16, 2017

Terminology	Updates		Definition of Terminology	Application of Terminology
	Date	Initials		
Deferred cont	04/15/16	df	Felony with current/active or past deferred probation. Probation may be dismissed and discharged early. You must confirm if the probation is still active or if past deferred has been completed.	If active or unable to determine completion, subject is still considered under indictment, per case law--FLH. If completed it is not a conviction.
Deferred cont	04/24/14	bab	Felony with violation of probation. The court may proceed with an adjudication of guilt on the original charge.	This becomes a conviction if you have an adjudication of guilt.
Deferred cont	10/19/17	df	Misdemeanor with current/active deferred probation.  Misdemeanor drug related offenses receiving a deferred sentence within the past year will not meet as a drug conviction within the past year pursuant to 18 USC § 922(g)(3).	This is not a conviction. Need to check probation for firearm restrictions.  If a drug arrest is within the past year the offense may meet 18 USC § 922(g)(3) as an inference of current use or unlawful possession.
Deferred cont			MCDV related offenses with past deferred probation needs researched to determine if an adjudication of guilt has been entered.	This remains a conviction if you have an adjudication of guilt
Deferred Prosecution	04/06/17	df	Prosecution of a case has been deferred and the subject is under supervision. Charge can still be pending.	This is not a conviction, but refers to a pending charge which may be dismissed if the defendant satisfied the conditions of an agreement with the state.
Dismissed			<b>This is a final disposition.</b>	<b>This is not a conviction.</b>
Disposition Unavailable			This is not a final closure for the case. It means it has been undetermined if the case has been filed.	Requires research.
Elapsed Time			Indicates the prosecutor reports no case filing after a locally determined period of time.	This is not a conviction when code of E (elapsed time) is on the record.
Expunction	04/24/14	bab	The release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited. <i>Texas Criminal Procedure Article 55.03.</i>	This IS a true expunction and NOT DISQUALIFYING for NICS purposes.
Juvenile Adjudication	02/07/14	bab	An order of adjudication or disposition in a proceeding is not a conviction of crime.	This is not a conviction. This is not a TX State Prohibitor.

Updated by DF 1/26/2017

AGO\_LINTON\_228

**Texas Terminology Page**

Last Updated:

Saturday, December 16, 2017

Terminology	Updates		Definition of Terminology	Application of Terminology
	Date	Initials		
No Billed by Grand Jury	07/18/07	bab	The Grand Jury did not have enough information to indict the individual.	<b>This is not a conviction.</b>
No Record Found	04/24/14	bab	The court is unable to locate any case file or information.	<b>This is not a final disposition.</b>
Nolle Prosequi	04/24/14	bab	This is a refusal by a prosecutor to prosecute a charge.	<b>This is not a conviction.</b>
Non-Disclosure Order	04/24/14	bab	An order of non-disclosure has been issued. If a person is placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, subsequently receives a discharge and dismissal under Section 5(c), Article 42.12, and satisfies the requirements of subs.(e), the person may petition the court (through a non-disclosure petition) that placed the defendant on deferred adjudication for an order of non disclosure under TX Government Code 411.081.	<b>This is not a conviction.</b>
Non-Suit	04/24/14	bab	No trial on the merits of the case. This is a disposition in civil cases only, and would indicate that the plaintiff/petitioner has dropped the suit. In this context it would only apply to juvenile cases.	<b>This is not a conviction.</b>
Order For New Trial/New Trial Granted	04/24/14	bab	A motion for a new trial has been granted. This is not necessarily an appellate result, as a motion for a new trial can be filed and granted before an appeal. It has the effect of putting the case back in the position it was in before trial.	<b>This typically indicates that any prior disposition is rescinded, and the case remains pending. However, there are instances when this is only granted for the punishment phase. This is not final unless a disposition follows.</b>

AGO\_LINTON\_229

**Texas Terminology Page**

Last Updated:

Saturday, December 16, 2017

Terminology	Updates		Definition of Terminology	Application of Terminology
	Date	Initials		
<b>Plea in Bar</b>	04/24/14	bab	The case is dismissed because of "plea in bar". This can be entered because of a double jeopardy complaint or because the defendant has otherwise shown that he/she cannot be prosecuted for the offense, regardless of guilt. This destroys the action and bars it from further prosecution.	<b>This is not a conviction.</b>
<b>Pretrial Diversion</b>	04/24/14	bab	The status of the court disposition numeric is caused by a pre-trial diversion. Usually a probation-type disposition, but without requiring the defendant to enter a plea. Successful completion will usually result in dismissal, but failing to comply with the condition may result in filing of the charges and a possible conviction later.	<b>This is not a conviction but does suggest the existence of a pending charge. Additional research is required, if current pre-trial, to determine if the individual is under indictment.</b>
<b>Prosecutor Has Rejected The Charge Without A Pre-Trial Diversion</b>	07/26/16	df	Per TX Art. 60.01(12)(a), a charge that after the arrest of the offender, the prosecutor declines to include in an information or present to a grand jury; or (b) an information or indictment that, after the arrest of the offender, the prosecutor refuses to prosecute.	<b>This is a final disposition and not a conviction.</b>
<b>Reduction of State Jail Felony Punishment to Misdemeanor Punishment per TX Penal § 12.44</b>	03/24/16	df	Per TX PENAL § 12.44, a court may punish a defendant who is convicted of a state jail felony by imposing the confinement permissible as punishment for a Class A misdemeanor.	<b>If the conviction is under 12.44(a), the conviction is a felony. If the conviction is under 12.44(b), the conviction is a misdemeanor.</b>
<b>Released</b>	01/12/16	df	Subject is released on different concurrent supervision.	<b>This is not a disposition, just a change in custody status. The related charge may still be pending or the subject may be serving a sentence on that charge. Additional research is required.</b>
<b>Released By Authority DA's Office</b>	04/24/14	bab	Different than a dismissal. The DA's office released or transferred without otherwise altering the status of the case.	<b>This is not a conviction.</b>

Updated by DF 1/26/2017



**Texas Terminology Page**

Last Updated:

Saturday, December 16, 2017

Terminology	Updates		Definition of Terminology	Application of Terminology
	Date	Initials		
Sealed Record	12/16/17	df	See Non-Disclosure Order	This is not a conviction.
Set Aside	04/24/14	bab	The conviction relating to this custody event has been set aside. A judge discharges the defendant from community supervision and sets aside the verdict or permits the defendant to withdraw his plea and dismisses the charge. (see memo)	This is not a conviction.
Shock Probation	01/26/17	df	Per TX Articles 42A.202 and 42A.204, a judge can sentence a defendant from 60 to 120 days in jail for a felony offense and at the end of the term can change the jail to probation or leave the defendant in jail.	This is a final disposition and remains a conviction.
Suspension of Sentence	04/24/14	bab	The courts have accepted a plea or found the subject guilty, but suspended service of the sentence upon conditions. Texas courts have jurisdiction, after conviction, to suspend the imposition or execution of sentence and invoke probation	This is not a final disposition.
Taken Into Consideration	04/24/14	bab	A charge is taken into consideration during the punishment phase of a different charge's adjudication. The charge was taken into consideration at the sentencing in another case pursuant to Texas Penal Code, Section 12.45. Usually this results in the dismissal of the charge after a plea of guilty in the other case.	This is not a conviction.

AGO\_LINTON\_231

**Texas Terminology Page**

Last Updated:

Saturday, December 16, 2017

Terminology	Updates		Definition of Terminology	Application of Terminology
	Date	Initials		
Unadjudicated With	01/15/16	DF	Per TX Penal § 12.45, A person may, with the consent of the attorney for the state, admit during the sentencing hearing his guilt of one or more unadjudicated offenses and request the court to take each into account in determining sentence for the offense or offenses of which he stands adjudged guilty. If the court lawfully takes into account the admitted offense, prosecution is barred for that offense.	<b>This is a final disposition and not a conviction.</b>
Waived	12/01/08	bab	The disposition of Waived is not final. Additional research must be conducted to determine what was actually waived.	<b>This is not a final disposition.</b>

AGO\_LINTON\_232

**LEE EXHIBIT L**

Washington Terminology Page

Last Updated:

Friday, March 15, 2019

Terminology	Updates		Definition of Terminology	Application of Terminology
	Date	Initials		
Alford Plea			A defendant, although pleading guilty, continues to deny his or her guilt, but enters a plea to avoid threat of greater punishment.	This remains a conviction.
Bond or Bail Forfeiture	11/10/10	rhd	If posted as a DISPOSITION for an offense the defendant is allowed to forfeit their bond or bail as a final disposition for the offense.	This is not a conviction in WA. The charge is dropped.
Committed	12/13/16	rhd	When a charge is amended to a non-criminal CIVIL infraction it is "committed" when the defendant admits to the amended charge.	This is not a criminal conviction and does not meet 922(g)(4) criteria.
Conditional Release	06/14/17	rhd	Is a mechanism whereby mentally ill persons of varying degrees of dangerousness, previously deemed insanity acquittees, can be conditionally reintroduced into society where it is determined the conditions will reasonably mitigate the dangerousness.	This is not a conviction, but requires additional research for possible firearms restrictions per 922(g)(4).
Deferred Disposition	03/04/14	rhd	Per RCW 13.40.127 of the Juvenile Justice Act, upon successful completion of the deferral the conviction can be vacated and dismissed. If the juvenile fails to comply with the terms of supervision, the court shall enter an order of disposition.	This is a conviction and can be a federal or a state prohibitor if the conviction is for a felony unless firearm rights have been restored.
Deferred Prosecution			A pre-conviction program designed to encourage treatment and allow a person to avoid a conviction upon successful completion of the program.	This is not a conviction. However, charges may be pursued if any of the terms of the agreement or program are not complied with. Research for successful completion.

AGO\_LINTON\_251

**Washington Terminology Page**

Last Updated:

Friday, March 15, 2019

Terminology	Updates		Definition of Terminology	Application of Terminology
	Date	Initials		
Deferred Sentence	03/15/19	cme	<p>Enumerated Felony Offenses per 9.41.040:</p> <p>Murder  Manslaughter  Robbery  Rape  Indecent Liberties  Arson  Assault  Kidnapping  Extortion  Burglary  Controlled Substance Violations under RCW 69.50.401(69.50.401(a) prior to July 1st 2004) and 69.50.410</p>	<p>Offenses prior to 07/01/1984 with dismissed probation is not a conviction unless the offense is an enumerated felony.</p> <p>All enumerated felonies before 07/1/1984 and ALL misdemeanor/felony offenses on or after 07/01/1984 remains a conviction.</p>
Dismissed			This is a final disposition. Generally, not a conviction if there was no plea or verdict of guilt entered.	This may or may not be a conviction.
Dismissed with Prejudice	07/06/11	rhd	Case is removed from the court docket and can not be re-filed	This is not a conviction
Dismissed without Prejudice	03/12/13	rhd	Court dismisses the offense but does not prohibit the individual from being recharged. IF the charge is refiled it will appear as another entry on the record.	This is not a conviction. This is a final disposition (unless the charge is refiled)
Expungement	01/09/14	rhd	Washington criminal convictions cannot be expunged	This is not a true expungement for NICS purposes.

AGO\_LINTON\_252



**Washington Terminology Page**

Last Updated:

Friday, March 15, 2019

Terminology	Updates		Definition of Terminology	Application of Terminology
	Date	Initials		
Juvenile Adjudication	05/24/18	cmc	This includes adjudications which were dismissed after an adjudication, a period of probation, suspension, or deferral of sentence.	<p>1. For any felony offense, 6/11/1992 to present, - a felony juvenile adjudication is a conviction for federal firearms purposes and therefore meets 18 USC 922(g)(1) unless pardoned/restored/etc.</p> <p>2. For misdemeanor assault 4th degree, coercion, stalking, reckless endangerment, criminal trespass 1st degree, or a violation of a protection order offenses committed on or after 7/1/1993 or harassment on or after 06/07/2018: <u>when committed by one family or household member against another</u> - this a WA state Prohibition.</p> <p>3. For any offense not listed in 1 or 2 above (all other misdemeanors, etc.) - this is not a conviction and is not a WA state Prohibition.</p>
Juvenile Sealed Records	10/18/18	cmc	A juvenile record may contain any juvenile disposition before being sealed for certain purposes. RCW § 13.50.050 / RCW § 13.50.260	This does not remove a previously existing federal or WA State Prohibition for offenses on or after 06/11/1992. Juvenile Adjudications for offenses prior to 06/11/1992 are not viewed as a conviction.
No Charges Filed / No Action	01/05/11	rhd	This is a final disposition and is not a conviction.	This is not a conviction.
Nolle Prosequi			Not a conviction.	This is not a conviction.
Non-felony	04/07/11	rhd	Is noted in the court segment of the WA criminal history record when the offense reduced by the court but the statute for the offense indicates a felony level only	The conviction is for a gross misdemeanor or misdemeanor level offense.
Pretrial Diversion	01/30/14	rhd	The statute governing pretrial diversions was repealed in 1985, and it applied only to crimes occurring before July 1, 1984. However, Prosecuting Attorney's have the non-statutory authority to enter into a "diversion agreement".	This is not a conviction. However, if diversion was not successfully completed then charges could still be filed. Research for successful completion.

**Washington Terminology Page**

Last Updated:

Friday, March 15, 2019

Terminology	Updates		Definition of Terminology	Application of Terminology
	Date	Initials		
Probation Before Judgment			Not a finding of guilt.	<b>This is not a conviction.</b>
Released			This is not a final disposition. It could mean any of the following:  Released until trial, Released on own recognizance, Released on bail/bond, Released on parole/probation.	<b>This is not a conviction. Further research is required.</b>
Stricken on Leave				<b>This is not a conviction.</b>
Stipulated Order of Continuance(SOC)/ Continuance	04/03/18	cmc	Stipulated order of continuance is not a final disposition. The defendant is placed on a probationary period, after successful completion the charge is dismissed. If defendant does not comply with the terms, charges can be pursued. Defendant is not considered under indictment or information during the probationary period.	<b>This is not a conviction. If probation is not completed successfully, charges can be pursued. Research for successful completion.</b>
Suspended Imposition/ Execution of Sentence	03/15/19	cmc	See Deferred Sentence for list of enumerated felony offenses.	<b>Offenses prior to 07/01/1984 with dismissed probation is not a conviction unless the offense is an enumerated felony.</b>  <b>All enumerated felonies before 07/1/1984 and ALL misdemeanor/felony offenses on or after 07/01/1984 remains a conviction.</b>

AGO\_LINTON\_254



**Washington Terminology Page**

Last Updated:

Friday, March 15, 2019

Terminology	Updates		Definition of Terminology	Application of Terminology
	Date	Initials		
Suspended Sentence	03/15/19	cmc	After a plea/conviction, the court may suspend or defer a sentence and place the defendant on probation. See <b>Deferred Sentence</b> for list of enumerated felony offenses.	<p>Offenses prior to 07/01/1984 with dismissed probation is not a conviction unless the offense is an enumerated felony.</p> <p>All enumerated felonies before 07/1/1984 and ALL misdemeanor/felony offenses on or after 07/01/1984 remains a conviction.</p>
Vacated	03/15/19	cmc	Once the conviction is vacated, it is not disseminated to the public, but the arrest is available to criminal justice agencies. See <b>Deferred Sentence</b> for list of enumerated felony offenses.	<p>Offenses prior to 07/01/1984 with dismissed probation is not a conviction unless the offense is an enumerated felony.</p> <p>All enumerated felonies before 07/1/1984 and ALL misdemeanor/felony offenses on or after 07/01/1984 remains a conviction.</p>

AGO\_LINTON\_255

1 George M. Lee (SBN 172982)  
gml@seilerepstein.com

2 **SEILER EPSTEIN LLP**  
275 Battery Street, Suite 1600  
3 San Francisco, CA 94111  
Phone: (415) 979-0500  
4 Fax: (415) 979-0511

5 Attorneys for Plaintiffs  
CHAD LINTON, PAUL MCKINLEY STEWART,  
6 KENDALL JONES, FIREARMS POLICY FOUNDATION,  
FIREARMS POLICY COALITION,  
7 SECOND AMENDMENT FOUNDATION,  
THE CALGUNS FOUNDATION and MADISON  
8 SOCIETY FOUNDATION

9  
10 **UNITED STATES DISTRICT COURT**

11 **NORTHERN DISTRICT OF CALIFORNIA**

12 CHAD LINTON, et al.,

13  
14 Plaintiffs,

15 vs.

16 XAVIER BECERRA, in his official capacity as  
Attorney General of California, et al.,

17  
18 Defendants.

Case No. 3:18-cv-07653-JD

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS’ MOTION FOR SUMMARY  
JUDGMENT, OR IN THE ALTERNATIVE, FOR  
PARTIAL SUMMARY JUDGMENT**

**[FRCP 56]**

Courtroom 11, 19<sup>th</sup> Floor  
Judge: Hon. James Donato

19  
20  
21 **ORDER GRANTING SUMMARY JUDGMENT**

22 The motion of plaintiffs Chad Linton, Paul McKinley Stewart, Kendall Jones, Firearms  
23 Policy Foundation, Firearms Policy Coalition, Second Amendment Foundation, California Gun  
24 Rights Foundation and Madison Society Foundation (“Plaintiffs”) for summary judgment, or in  
25 the alternative, partial summary judgment of claims, came for hearing before this Court, Hon.  
26 James Donato presiding. Plaintiffs and moving parties were represented by George M. Lee, their  
27 counsel of record. Defendants Xavier Becerra, in his official capacity as Attorney General of  
28 California, Brent E. Orick, in his official capacity as Acting Chief for the Department of Justice

1 Bureau of Firearms, and Robert D. Wilson, in his official capacity as Deputy Attorney General  
2 (“Defendants”) were represented by Deputy Attorney General Maureen C. Onyeagbako, their  
3 counsel of record. The Court considered all papers submitted in support of, and in opposition to,  
4 the Plaintiffs’ motion, and considered all argument thereon. The matter having been submitted,  
5 and good cause appearing, the Court hereby orders as follows:

6 Plaintiffs’ motion for summary judgment pursuant to FRCP 56 is GRANTED. The Court  
7 finds that there is no genuine dispute as to any material fact and that the moving parties are  
8 entitled to judgment as a matter of law. FRCP 56(a). Accordingly, the Court hereby GRANTS  
9 the Plaintiffs’ motion, and shall enter separate judgment in favor of all Plaintiffs, and against  
10 Defendants, for declaratory and injunctive relief, on all of their claims, as follows:

11  
12 COUNT I  
13 (SECOND AMENDMENT)

14 The Court finds that Defendants’ policies, practices, customs, in enforcing California  
15 Penal Code §§ 29800 and 30305, as applied to individual Plaintiffs Chad Linton, Paul McKinley  
16 Stewart, and Kendall Jones, violate the Second Amendment of the U.S. Constitution. Plaintiffs  
17 have shown that the Defendants’ policies, practices and customs in applying sections 29800 and  
18 30305, as applied to the individual Plaintiffs, when the prohibitions imposed by those sections  
19 are solely based upon the prior felony convictions at issue and as shown, burdens conduct  
20 protected by the Second Amendment, and Defendants have not shown sufficient justification  
21 under either the standard of strict scrutiny (requiring the State to show both a compelling state  
22 interest in prohibiting persons convicted of non-violent felonies in other states from owning  
23 firearms, where the convictions have been set aside, vacated and dismissed, and that the State’s  
24 policies are narrowly tailored to avoid infringing upon constitutional liberties, with no less  
25 restrictive alternatives to achieve those ends), or intermediate scrutiny (requiring the State to  
26 show both a significant state interest, and a reasonable fit between those ends and the policies,  
27 practices and customs at issue) to justify the burdens that their policy imposes. Plaintiffs have  
28 made a sufficient showing that they are law-abiding citizens who have not been convicted of  
violent or serious offenses since their original felony convictions, that they are not prohibited

1 from owning firearms by state and federal law, that their rights to keep and bear arms were  
2 specifically restored to them in the respective states of origin, which would not justify a lifetime  
3 ban on constitutionally-protected conduct. Accordingly, continuing enforcement of Pen. Code §§  
4 29800 and 30305, as applied to individual Plaintiffs Linton, Stewart and Jones, violates the  
5 Second Amendment.

6  
7 **COUNT II**  
8 **(FULL FAITH AND CREDIT CLAUSE)**

9 Plaintiffs have shown entitlement to judgment in their favor on their second claim, as  
10 Defendants' policies, practices and customs in refusing to recognize or honor the final  
11 disposition of those felony convictions incurred in other states, violates the Full Faith and Credit  
12 Clause of the U.S. Constitution, art. IV, § 1, and 28 U.S.C. § 1738, because such policies,  
13 practices and customs fail to give full faith and credit to those final judgments entered by the  
14 courts of Washington State, Arizona and Texas, which had jurisdiction and which set aside,  
15 vacated and/or dismissed the individual Plaintiffs' underlying felony convictions, and restored  
16 their rights to own and possess firearms therein.

17  
18 **COUNT III**  
19 **(RIGHT TO TRAVEL)**

20 Plaintiffs have shown entitlement to judgment in their favor on their third claim, as  
21 Defendants' policies, practices and customs violates the constitutional right to travel, as  
22 protected by the Privileges and Immunities Clause, art. IV, § 2 of the Constitution, and the  
23 Privileges or Immunities Clause of the Fourteenth Amendment. Defendants' policies, practices  
24 and customs, in refusing to honor those final judgments and orders setting aside, vacating and  
25 dismissing the individual Plaintiffs' underlying convictions, are based solely upon a literal  
26 reading of California Pen. Code § 29800, subdiv. (a), while allowing persons convicted of felony  
27 offenses in California to restore their firearm rights when certain felony wobbler offenses are  
28 reduced, post-conviction, to misdemeanors. This constitutes disparate treatment between out-of-  
state former felons, who were convicted of comparable offenses, and persons convicted in

1 California of similar offenses, and violates the constitutional right to travel. *Saenz v. Roe*, 526  
2 U.S. 499, 119 S.Ct. 1518 (1999).

3 -- o()o --

4 Accordingly, declaratory judgment as set forth herein shall be entered in favor of  
5 Plaintiffs Chad Linton, Paul McKinley Stewart, and Kendall Jones against defendants Xavier  
6 Becerra, in his official capacity as Attorney General of California, Brent E. Orick, in his official  
7 capacity as Acting Chief of the Department of Justice Bureau of Firearms, and Robert D. Wilson,  
8 in his official capacity as Deputy Attorney General.

9 The organizational plaintiffs in this action, Firearms Policy Foundation, Firearms Policy  
10 Coalition, Inc., Second Amendment Foundation, Inc., California Gun Rights Foundation, and  
11 Madison Society Foundation, have moved on behalf of individual Plaintiffs Linton, Stewart and  
12 Jones, each of whom are members. The relief that the organizational plaintiffs requested in the  
13 motion is for judgment that would provide relief to individual plaintiffs Linton, Stewart and  
14 Jones. That relief is now being granted by and through this Order.

15 Therefore, injunctive relief should be granted to the Plaintiffs. Defendants, and all  
16 working for and in concert with the Defendants, including all bureaus, departments and agencies  
17 of the California Department of Justice (“DOJ”) are hereby enjoined from enforcing or  
18 continuing to enforce California Penal Code §§ 29800 and 30305 as they may be applied to  
19 plaintiffs Linton, Stewart and Jones, to the extent that such alleged prohibitions are or would be  
20 based upon their non-violent, out-of-state felony convictions that have been set aside and vacated  
21 in their respective states of origin, as referenced and attached to their individual declarations, and  
22 in the records produced by the Defendants. Defendants are further restrained and enjoined from  
23 denying these individual plaintiffs Linton, Stewart and Jones Certificates of Eligibility pursuant  
24 to Pen. Code § 26710 if applied for.

25 IT IS SO ORDERED.

26 Dated: \_\_\_\_\_

27 \_\_\_\_\_  
HON. JAMES DONATO  
UNITED STATES DISTRICT JUDGE