



Tuesday, April 14, 2020

**VIA CERTIFIED U.S. MAIL, FAX (916-323-5341), & E-MAIL  
(Xavier.Becerra@DOJ.CA.Gov)**

Attorney General Xavier Becerra  
Office of the Attorney General  
1300 "I" Street  
Sacramento, CA 95814-2919

Bureau of Firearms Chief Brent Orick  
California Department of Justice  
P.O. Box 820200  
Sacramento, CA 94203-0200

**Regarding:            Unlawful DOJ Regulation & Enforcement Practice  
                             Urgent Demand to Cease and Desist**

Dear Attorney General Becerra, Department of Justice, and Bureau of  
Firearms Chief Orick:

We write you today on behalf of a coalition of organizations and their California members regarding recent actions you have taken that prevent legally eligible firearm and ammunition purchasers and transferees from taking possession of their property as they are entitled under law, and unlawfully modifies state law regarding Dealer's Record of Sale (DROS) firearm releases. Given the circumstances, we wanted to make you aware of these important and urgent issues to provide you with a reasonable opportunity to take corrective actions and avoid unnecessary litigation.

In a recent publication to the DROS Entry System (DES), your Department of Justice (DOJ) and Bureau of Firearms (BoF) have unlawfully modified State law regarding firearm and ammunition releases by posting a

notice (the Notice), that is and contains a new regulation and enforcement practice, which states:

Under Penal Code section 28220(f)(4), the Department of Justice (DOJ) has up to 30 days to complete background checks on purchasers of firearms and ammunition. Prior to the COVID-19 pandemic, DOJ typically completed these checks within Penal Code Section 26815(a)'s 10-day waiting period. COVID-19 protective measures have impacted the ability to increase the personnel resources in the DROS unit to address the recent sustained increase in firearms and ammunitions transactions without compromising the health and safety of our employees and the community. As a result, firearms and ammunition dealers and purchasers should know that as DOJ employees continue to perform the statutorily required background checks throughout the COVID-19 pandemic, circumstances may compel that background checks are completed after the expiration of the 10-day waiting period. DOJ will continue to strive to provide the best service and complete these checks in the shortest time possible.

While your Notice—a patent expression and confession of an unlawful underground regulation and enforcement practice<sup>1</sup>—gets points for creative writing, it fails as a matter of law.

As you know, *only* “[i]f the [DOJ] ascertains the final disposition of the arrest or criminal charge, or the outcome of the mental health treatment or evaluation, or the purchaser’s eligibility to purchase a firearm . . . after the waiting period described in Sections 26815 and 27540, but within 30 days of

---

<sup>1</sup> See, e.g., *Doe v. Becerra*, 20 Cal.App.5th 330 (Cal. Ct. App. 2018).

the dealer's original submission of the purchaser information to the department pursuant to this section" may the DOJ take additional actions (and time) to further investigate that purchaser's questionable record, and thus attempt to deny release. And release can be denied only if they are "prohibited by state or federal law."

On one hand, the State of California and you have significantly increased the costs to and burdens upon firearm and ammunition purchasers in California. In addition to increased regulations and costs,<sup>2</sup> firearm and ammunition purchasers and owners in California have faced increasing delays and other systemic failures.<sup>3</sup>

On the other hand, the quality and availability of services provided by you continue to rapidly decline because, at least in part, you do not treat the right to keep and bear arms as a real right that applies against you. And this is not a mere hypothetical slippery slope we find ourselves on today—yours is an outright free-fall of incompetence, deliberate indifference, and animus towards the right to keep and bear arms and those who would exercise it.<sup>4</sup>

To be sure, "[n]ot all DROS applications go to the processing queue for an analyst to review. . . . If a DROS application has been checked by all of the

---

<sup>2</sup> See, e.g., "Regulations: Dealer Record of Sale (DROS) Fee (Emergency)," online at <https://oag.ca.gov/firearms/regs/drosfee>.

<sup>3</sup> See, e.g., *Rhode v. Becerra* (S.D. Cal. No.: 18-cv-802-BEN) and *Sharp v. Becerra* (E.D. Cal. No. 2:18-cv-02317-MCE-AC).

<sup>4</sup> "Importantly, [DOJ's] own policies can support a finding of deliberate indifference." *Sharp v. Becerra*, MEMORANDUM AND ORDER [DENYING MOTION TO DISMISS], 393 F. Supp. 3d 991, 998, (E.D. Cal. 2019).

databases, and there are no hits or matches found in any of the databases, then that DROS application is considered ‘auto-approved’ and is not put into any queue for a CIS Analyst to review.”<sup>5</sup> “Approximately 20% of all DROS applications are auto-approved and do not go into the DROS application queue for review by a CIS Analyst.”<sup>6</sup>

If you simply *complied with the State’s laws*—rather than tried to twist them to fit your policy preferences and horribly defective systems and processes—it would likely significantly reduce firearm and ammunition transaction backlog and the corresponding labor required to perform your legally required duties in the time established in black-letter law.

Not only does your Notice and enforcement of it violate statutory law, they also violate the fundamental, individual right to keep and bear arms as well as due process. But this shouldn’t be news to you. Penal Code section 28220(f)(4) was itself enacted to cover for prior such abuses, after the Department of Justice was sued over rampant delays in processing firearm purchase applications. (Assembly Bill 500, 2013 - 2014 Reg. Sess.)

Indeed, DOJ and BoF staff have encouraged and facilitated the State in its design, development, implementation, maintenance, and enforcement of California’s increasingly complex regulatory scheme—including the implementation Penal Code section 28220(f)(4) after the they were caught red-

---

<sup>5</sup> *Silvester v. Harris*, FINDINGS OF FACT AND CONCLUSIONS OF LAW, 41 F. Supp. 3d 927, 952 (E.D. Cal. 2014).

<sup>6</sup> *Id.* at 953.

handed violating the rights of its residents and failing in its duty to timely process firearm applications.

According to then-Assistant Chief for the DOJ Bureau of Firearms, Steve Buford, “Problematic or unresolved criminal history records are rare, about 1 percent of all applications. For the January through August 28, 2013 period, the Department processed 626,307 DROS applications, denied 4,835 and delayed 7,293.”<sup>7</sup>

And “[a]s of March 31, 2019, the Department finished investigations for all 20,721 cases of the historical backlog.”<sup>8</sup> Apparent progress on clearing APPS backlog and recordkeeping must too surely help reduce the number of ‘problematic’ records DOJ staff encounters.

With all of the DOJ’s increased budget, revenues, taxes, and fees, not to mention technological advances and seeming success in clearing APPS backlog, we cannot help but hope that such “problematic or unresolved” records are still as, or more, rare. So why, then, are so many transfers of constitutionally protected items being delayed, and denied by same, by an unnecessary and unlawful policy and practice as reflected in the Notice?

In the United States, the default state is the presumption of liberty. Your unlawful and unconstitutional policies and practices being enforced

---

<sup>7</sup> Declaration of Steve Buford in Support of Opposition to Petition for Writ of Mandate, *Schoepf v. Lindley*, Fresno Superior Court case no. 13CECG01132.

<sup>8</sup> Armed and Prohibited Persons System (APPS) 2019 Annual Report, online at <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/apps-2019.pdf>.

against legally eligible firearm and ammunition transferees flips that presumption on its head. And to be very clear, neither the statutes nor the federal and state constitutions authorize you to add yet another delay and impact to the regulatory scheme at issue here and the people subject to it.

\* \* \*

If you cannot manage to run the firearm and ammunition systems the State demands it to in accordance with constitutional principles, then the State should stop requiring those programs and adding new ones.

In addition to direct costs and impacts to our organizations, our members and similarly situated members of the public are being harmed by the Notice and enforcement of it.<sup>9</sup> But there is no reason that the problems discussed herein cannot be addressed immediately by your further directive just as fast as you created new law by decree. And if you do the right thing, we can all avoid the expense and burden of further expedited litigation during these already challenging times.

We respectfully demand that you immediately cease and desist enforcement of their unlawful actions of delaying the delivery of firearms and ammunition for those applicants whose determination can be made on the basis of the statutorily identified records within your and their custody and control.

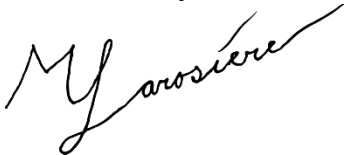
---

<sup>9</sup> *See also* the enclosed letter dated April 14, 2020, on the same subject sent to you by attorney C.D. Michel of Michel & Associates, P.C., on behalf of his similarly impacted clients (California Rifle & Pistol Association, FFLGuard, and hundreds of firearm retailers). We join their analysis and incorporate the letter's contents by reference.

Further, we ask that you contact me by 5 p.m. Pacific time on Wednesday, April 15 by email to MLarosiere@fpclegal.org and inform us of the path you intend to take.

If we do not hear from you within that time, we will assume you do not intend to take corrective action and that litigation will be required.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Larosiere', with a stylized, flowing script.

Matthew Larosiere  
Director of Legal Policy

*on behalf of*


Firearms Policy Coalition  
Firearms Policy Foundation  
California Gun Rights Foundation  
California Association of Federal Firearms Licensees  
Second Amendment Foundation

cc: Robert Wilson, Deputy Attorney General (Bureau of Firearms)  
(robert.wilson@doj.ca.gov)

John Echeverria, Deputy Attorney General  
(john.echeverria@doj.ca.gov)

ATTACHMENT 1 OF 2

State of California  
Department of Justice



Office of the  
Attorney General

Home Page

DROS Entry System (DES) 3.5.0.0 (12/19/2019)


Contact Us Conditions of Use

Indicates Required Field

4/7/2020, 7:33:05 AM


You have successfully logged off the system.

DROS Entry System Log On



Under Penal Code section 28220(f)(4), the Department of Justice (DOJ) has up to 30 days to complete background checks on purchasers of firearms and ammunition. Prior to the COVID-19 pandemic, DOJ typically completed these checks within Penal Code Section 26815(a)'s 10-day waiting period. COVID-19 protective measures have impacted the ability to increase the personnel resources in the DROS unit to address the recent sustained increase in firearms and ammunitions transactions without compromising the health and safety of our employees and the community. As a result, firearms and ammunition dealers and purchasers should know that as DOJ employees continue to perform the statutorily required background checks throughout the COVID-19 pandemic, circumstances may compel that background checks are completed after the expiration of the 10-day waiting period. DOJ will continue to strive to provide the best service and complete these checks in the shortest time possible.

Not yet a DES user?  
If you are not a DES user [request a DES account.](#)

Current DES users  [\[View User Name and Password information\]](#)

\*User Name

\*Password



ATTACHMENT 2 of 2

SENIOR PARTNER  
C. D. Michel\*

MANAGING PARTNER  
Joshua Robert Dale

SPECIAL COUNSEL  
Anna M. Barvir  
Sean A. Brady  
Matthew D. Cubeiro  
W. Lee Smith

ASSOCIATES  
Tiffany D. Cheuvront  
Alexander A. Frank  
Konstadinos T. Moros  
Los Angeles, CA

\* Also admitted in Texas and the  
District of Columbia



OF COUNSEL  
Jason A. Davis  
Joseph Di Monda  
Scott M. Franklin  
Clint B. Monfort  
Michael W. Price  
Tamara M. Rider  
Los Angeles, CA

WRITER'S DIRECT CONTACT:  
562-216-4444  
cmichel@michellawyers.com

April 14, 2020

**VIA CERTIFIED U.S. MAIL & EMAIL**

XAVIER BECERRA  
California Attorney General  
California Department of Justice  
4949 Broadway  
Sacramento, CA 95820  
E-Mail: Xavier.Becerra@DOJ.CA.Gov

**Re: Current Ongoing Unlawful DOJ Regulation & Enforcement Practice  
Pre-Litigation Demand**

Attorney General Becerra,

We write on behalf of our clients the California Rifle & Pistol Association, FFLGuard, and hundreds of firearm retailers about recent unlawful actions by the Department of Justice (DOJ) and its Bureau of Firearms (BOF) that are preventing legally eligible firearm and ammunition purchasers and transferees from taking possession of their lawfully purchased property as they are entitled to under California state law and preventing licensed dealers from delivering said property.

In a recent publication to the Dealer's Record of Sale (DROS) DES system, the BOF is ignoring state law mandates regarding firearm and ammunition release procedures by posting a notice (the Notice), that is incorrect and contains a new regulation and enforcement practice. The Notice states:

Under Penal Code section 28220(f)(4), the Department of Justice (DOJ) has up to 30 days to complete background checks on purchasers of firearms and ammunition. Prior to the COVID-19 pandemic, DOJ typically completed these checks within Penal Code Section 26815(a)'s 10-day waiting period. COVID-19 protective measures have impacted the ability to increase the personnel resources in the DROS unit to address the recent sustained increase in firearms and ammunitions transactions without compromising the health and safety of our employees and the community. As a result, firearms and ammunition dealers and purchasers should know that

XAVIER BECERRA

California Attorney General

Re: Current Ongoing Unlawful DOJ Regulation & Enforcement Practice Pre-Litigation Demand

Page 2 of 8

as DOJ employees continue to perform the statutorily required background checks throughout the COVID-19 pandemic, circumstances may compel that background checks are completed after the expiration of the 10-day waiting period. DOJ will continue to strive to provide the best service and complete these checks in the shortest time possible.

#### **I. The Notice is Incorrect, and the DOJ's Action in Delaying Deliveries is Unlawful**

The Notice and the corresponding actions taken by the DOJ in delaying the delivery of firearms pursuant to this notice is incorrect as a matter of law and constitutes an unlawful underground regulation and enforcement practice. (*See, e.g., Doe v. Becerra* (2018) 20 Cal.App.5th 330.) The notice confuses two separate and distinct duties and responsibilities placed upon two different entities.

The DOJ is obligated to process information relating to firearm transfers from licensed dealers that collect this information and submit it to the DOJ. Dealers may release firearms only after 10 days have lapsed, except under specific statutorily authorized circumstances. The DOJ has no authority to delay *all* transactions. Rather, the DOJ is statutorily empowered to delay the release of a firearm *only* “*if* the records of the department, or the records available to the department in the National Instant Criminal Background Check System, *indicate*” that the purchaser is likely prohibited. (Pen. Code, § 12280, subd. (f)(1)(A).) Only then may the DOJ take additional actions (and time) to further investigate that purchaser’s questionable record, and thus attempt to deny the release of a purchased firearm. (Pen. Code, § 12280, subd. (f).) And the release can be denied only if it is “prohibited by state or federal law.” (Pen. Code, § 12280, subd. (f)(1)(B).)

#### **II. What State Law Requires: Waiting Period Versus Delay and the Correlated Duties**

In order to understand the interplay and distinctions between waiting periods versus firearm delivery delays, and the DOJ’s duty to process applications and release firearms for delivery versus the Dealer’s restriction on releasing firearms before 10 days, consider the provisions that mandate the duties and restrictions.

##### **A. Waiting Period – A Dealer’s Duty**

California’s waiting period is dynamic under certain circumstances, but in General, when a person purchases a firearm in California, the individual must wait 10 days before the seller can deliver it. (Pen. Code, §§ 26815, 27540.) This general 10-day waiting period applies to all types of firearms. But there are exceptions for certain purchasers, including peace officers and special permit holders. (Pen. Code, §§ 26950, 26965.)

California’s general waiting period is the second longest in the country. Besides California, only eight States and the District of Columbia have any kind of waiting period. Four of those

XAVIER BECERRA

California Attorney General

Re: Current Ongoing Unlawful DOJ Regulation & Enforcement Practice Pre-Litigation Demand  
Page 3 of 8

jurisdictions have waiting periods for all firearms.<sup>1</sup> The other five have waiting periods for only certain types of firearms.<sup>2</sup>

California's waiting period imposes a prohibition on the *delivery* of firearms by *California licensed firearm dealers*. Specifically, subdivision (a) of Penal Code section 27540 states that a dealer shall not deliver a firearm to a person:

**Within 10 days of the application to purchase, or, after notice by the department pursuant to Section 28220, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to Section 28225, whichever is later.**

Similarly, subdivision (a) of Penal Code section 26815 states that no firearm shall be delivered:

**Within 10 days of the application to purchase, or, after notice by the department pursuant to Section 28220, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to Section 28225, whichever is later.<sup>3</sup>**

It is important to note that these Penal Codes do not state a firearm may only be delivered "after notice by the department." If they did, this would give the DOJ carte blanche authority to delay the delivery of a firearm by a dealer. Rather, it permits the DOJ to delay the delivery of a firearm only upon notice pursuant to Penal Code section 28220. As described in detail below, Penal Code section 28220 also does not authorize the DOJ to delay any transaction, but rather mandates that the DOJ may delay those persons with specified indicators of prohibited status within the records examined and sets the **default delay for persons with specified indicators of prohibited status whose examination is inconclusive or incomplete at 30-days.**

---

<sup>1</sup> See Haw. Rev. Stat. Ann. § 134-2(e) (2016 Cum. Supp.) (14 days); Ill. Comp. Stat., ch. 720, §5/24-3(A)(g) (3 days for handguns, 1 day for long guns); R. I. Gen. Laws §§11-47-35(a)(1) (2016 Supp.), 11-47-35.1 (2012), 11-47-35.2 (7 days); D. C. Code Ann. §22-4508 (Cum. Supp. 2017) (10 days).

<sup>2</sup> See Fla. Stat. §790.0655 (2017) (3 days for handguns); Iowa Code Ann. §724.20 (3 days for handguns); Md. Pub. Saf. Code Ann. §§5-123 (2011), 5-124, 5-101(r) (Supp. 2017) (7 days for handguns and "assault weapons"); Minn. Stat. §624.7132 (2016) (5 business days for handguns and "semiautomatic military-style assault weapon[s]"); N. J. Stat. Ann. §2C:58-2(a)(5)(a) (7 days for handguns).

<sup>3</sup> Emphasis added.

XAVIER BECERRA

California Attorney General

Re: Current Ongoing Unlawful DOJ Regulation & Enforcement Practice Pre-Litigation Demand  
Page 4 of 8

Importantly, the California legislature presumed a non-prohibition when it comes to the default status of the purchaser by permitting the dealer to deliver the firearm if the dealer has not been notified by the DOJ to deny or delay the transaction. This is true regardless of whether the DOJ has completed its background check. **Thus, for purchasers who have no indicators of a prohibited status, the default delay is 10-days.** But, as a safeguard, Penal Code section 28255 contains the following mandate:

[I]f after the conclusion of the waiting period described in Sections 26815 and 27540, the individual named in the application as the purchaser of the firearm takes possession of the firearm set forth in the application to purchase, the dealer shall notify the Department of Justice of that fact in a manner and within a time period specified by the department, and with sufficient information to identify the purchaser and the firearm that the purchaser took possession of.

This provides the DOJ notice and opportunity to recover any firearms from persons later determined to be prohibited from possessing firearms or ammunition: “If disqualifying information arises about an individual who has already taken possession of a newly purchased firearm, California has in place the APPS system, which is designed to retrieve such firearms from prohibited persons. The APPS system acts as a safety net for individuals who have been previously approved to possess a firearm, but who later become prohibited.” (*Silvester v. Harris* (E.D.Cal. 2014) 41 F. Supp. 3d 927, 965.)

#### B. Processing Delays – A DOJ Duty

A step-by-step analysis of Penal Code section 28220 details the statutory actions that the DOJ may or must perform upon the receipt of firearm purchaser’s information. Subdivision (a) provides the duty placed upon the DOJ by the legislature to process the information upon submission, and states as follows:

(a) Upon submission of firearm purchaser information, the Department of Justice shall examine its records, as well as those records that it is authorized to request from the State Department of State Hospitals pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in subdivision (a) of Section 27535, or is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

The Legislature, having placed a time frame on the delivery of firearms by the dealer, has clearly mandated that the DOJ does not have the discretion to delay its examination, but rather placed a duty upon the DOJ to examine the specified records “upon submission of the firearm purchaser information.” The purpose, clearly stated, is to determine if the applicant is prohibited by state or federal law from possessing, receiving, owning or purchasing a firearm.



XAVIER BECERRA

California Attorney General

Re: Current Ongoing Unlawful DOJ Regulation & Enforcement Practice Pre-Litigation Demand  
Page 5 of 8

And, as part of its Penal Code section 28220 duties, the DOJ was provided 9 duties with notification components: 2 discretionary duties and 7 mandatory duties.

The first notice provision addressing delays, Penal Code section 28220 subdivision (f)(1), mandates that the DOJ *immediately* notify the dealer to delay the transfer of firearms under very limited circumstances. Specifically, the DOJ may notify the dealer to delay the transfer *if* the DOJ specified records *indicate* that the purchaser falls within a very specific category of individuals who are likely to be prohibited and only where the DOJ is unable ascertain whether the purchaser is prohibited from possessing, receiving, owning, or purchasing firearms:

(f)(1)(A) The department *shall immediately* notify the *dealer* to *delay* the transfer of the firearm to the purchaser *if* the records of the department, or the records available to the department in the National Instant Criminal Background Check System, *indicate one of the following*:

(i) The purchaser has been taken into custody and placed in a facility for mental health treatment or evaluation and may be a person described in Section 8100 or 8103 of the Welfare and Institutions Code and the department is unable to ascertain whether the purchaser is a person who is prohibited from possessing, receiving, owning, or purchasing a firearm, pursuant to Section 8100 or 8103 of the Welfare and Institutions Code, *prior to the conclusion of the waiting period described in Sections 26815 and 27540.*

(ii) The purchaser has been arrested for, or charged with, a crime that would make him or her, if convicted, a person who is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, and the department is unable to ascertain whether the purchaser was convicted of that offense *prior to the conclusion of the waiting period described in Sections 26815 and 27540.*

(iii) The purchaser may be a person described in subdivision (a) of Section 27535, and the department is unable to ascertain whether the purchaser, in fact, is a person described in subdivision (a) of Section 27535, *prior to the conclusion of the waiting period described in Sections 26815 and 27540.*

XAVIER BECERRA

California Attorney General

Re: Current Ongoing Unlawful DOJ Regulation & Enforcement Practice Pre-Litigation Demand  
Page 6 of 8

(B) The dealer shall provide the purchaser with information about the manner in which he or she may contact the department regarding the delay described in subparagraph (A).<sup>4</sup>

Significantly, each of the three reasons not only require that the DOJ have identified specific information within its records before instituting a delay, but that the identification of the information within its records have occurred “prior to the conclusion of the waiting period...” And, the requirement that the DOJ be “unable to ascertain” whether the applicant is prohibited from possessing, receiving, owning, or purchasing a firearm implies that the DOJ actually examine the records as obligated by Penal Code section 28220 subdivision (a). This section does not grant the DOJ discretion in its ability to delay the delivery of firearms pursuant to Penal Code sections 26815 and 27540.

In sum, Penal Code section 28220 provides a mandate upon the DOJ to examine its records and make determinations regarding the eligibility of applicants to purchase, acquire, and possess firearms. And, it provides certain notice requirements relating to actual determinations made in the examination process. It does not, however, provide any discretionary provision or mechanism by which the DOJ can delay firearms on its own accord. And, Penal Code section 28820(f)(4), being applicable to only those individuals who have specified indicators, provides a

### **III. The DOJ DROS System Entry Log-In Notice and Application**

At least as early as April 3, 2020 and thereafter, licensed California firearm dealers began contacting our office and our clients regarding their inability to deliver firearms after the 10-day waiting period. On Monday April 6, 2020, the DOJ DROS System Entry Log-In Notice provided a notice to its dealers, which stated in part:

Under Penal Code section 28220(f)(4), the Department of Justice (DOJ) has up to 30 days to complete background checks on purchasers of firearms and ammunition.

On the contrary, Penal Code section 28220(f)(4) does not grant the DOJ the 30 days to complete background checks on purchasers of firearms and ammunition. Rather, it mandates that the DOJ delay the delivery of firearms to purchasers who have specific indicators within the records examined by the DOJ. Penal Code section 28220(f)(4) implicitly mandates that the DOJ must actually examine its records prior to the expiration of the applicable 10-day waiting period and prior to any delay being initiated.

In fact, Section 28220(f)(4) was enacted after the Department of Justice was sued over rampant delays in processing firearm purchase applications. (Assembly Bill 500, 2013 - 2014 Reg. Sess.) Indeed, DOJ and BOF staff have encouraged and facilitated the State in its design, development, implementation, maintenance, and enforcement of California’s increasingly complex regulatory scheme—including the implementation Penal Code section 28220(f)(4) after

---

<sup>4</sup> Emphasis added.

XAVIER BECERRA

California Attorney General

Re: Current Ongoing Unlawful DOJ Regulation & Enforcement Practice Pre-Litigation Demand  
Page 7 of 8

the being sued for systematically violating the rights of California residents and failing in its duty to timely process firearm applications. And the State authorized only limited powers of delay to the DOJ pursuant to Penal Code section 28220(f)(4), *none* of which are discretionary.

The Notice and delays in accordance with this Notice confuse the duties of the DOJ to process applications with the 10-day waiting period, stating:

Prior to the COVID-19 pandemic, DOJ typically completed these checks within Penal Code Section 26815(a)'s 10-day waiting period. COVID-19 protective measures have impacted the ability to increase the personnel resources in the DROS unit to address the recent sustained increase in firearms and ammunitions transactions without compromising the health and safety of our employees and the community. As a result, firearms and ammunition dealers and purchasers should know that as DOJ employees continue to perform the statutorily required background checks throughout the COVID-19 pandemic, **circumstances may compel that background checks are completed after the expiration of the 10-day waiting period.** DOJ will continue to strive to provide the best service and complete these checks in the shortest time possible.

On its face, this statement provides an explanation for the delayed background checks. But the Notice is being promulgated as an explanation to the DOJ's refusal, via the Dealer Record of Sale Entry System, to permit licensed California firearms to deliver firearms after the 10-day waiting period has lapsed. While we understand the serious nature of the current Pandemic and the burdens it has placed upon not only the DOJ, but the entire world, the actions of applying a blanket delay on the delivery of firearms creates an additional burden for the DOJ.

Even if the delays were lawful, every delay increases the DOJ's burden. Penal Code section 28220(f)(1) mandates the additional step of notifying the dealer of the delay. Penal Code section 28220(f)(2) mandates the additional step that the DOJ notify the purchasers *by mail* of the delay. And, Penal Code section 28220(f)(3) requires that the DOJ immediately notify the dealer upon the purchaser being deemed eligible to possess firearms. The addition of these burdens, at a time of "sustained increase in firearm and ammunition transactions," do not reduce the burden placed upon the DOJ, but rather they amplifies the burden on the DOJ. And, as described above, it does not negate the duty to continue the examination.

If DOJ and BOF simply *complied with the State's law* it would likely significantly reduce their backlog and corresponding labor required to perform statutorily mandated duties. Moreover, "[n]ot all DROS applications go to the processing queue for an analyst to review . . . If a DROS application has been checked by all of the databases, and there are no hits or matches found in any of the databases, then that DROS application is considered 'auto-approved' and is not put into any queue for a CIS Analyst to review." (*Silvester v. Harris*, FINDINGS OF FACT AND CONCLUSIONS OF LAW, 41 F. Supp. 3d 927, 952 (E.D. Cal. 2014).) "Approximately 20% of all DROS applications

XAVIER BECERRA

California Attorney General

Re: Current Ongoing Unlawful DOJ Regulation & Enforcement Practice Pre-Litigation Demand  
Page 8 of 8

are auto-approved and do not go into the DROS application queue for review by a CIS Analyst.” (*Id.* at 953.)

#### IV. Conclusion

The DOJ does not have 30 days to process applications for firearms and ammunition, as stated in its Notice. For purchasers who have no indicators of a prohibited status, the default delay is 10-days. This shall be extended for persons whom, after the DOJ has examined their records and determine that specified indicators of prohibited status exist, in order to permit the DOJ to continue their examination of records and determine their status. For that limited set of individuals, the DOJ must continue its examination and if the DOJ determines that the individual is not prohibited, the DOJ shall immediately inform the dealer that they shall release the firearm. For those individuals whose examination is inconclusive or incomplete, a default maximum delay of 30-days protects their rights, and the DOJ shall inform the dealer that they may deliver the firearm.

In addition to direct costs and impacts to our organizations, our members and similarly situated members of the public are being harmed by the Notice and enforcement of it. We respectfully demand that you direct DOJ and BOF to immediately cease and desist enforcement of their unlawful actions of delaying the delivery of firearms and ammunition for those applicants whose determination can be made on the basis of the statutorily identified records within your and their custody and control.

We look forward to hearing from you promptly.

Sincerely,



C.D. Michel

cc: Robert Wilson, Deputy Attorney General (BOF), [robert.wilson@doj.ca.gov](mailto:robert.wilson@doj.ca.gov)  
John Echeverria, Deputy Attorney General, [john.echeverria@doj.ca.gov](mailto:john.echeverria@doj.ca.gov)