No. D081134

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION ONE

MAURO CAMPOS, et al.,
Petitioners/Plaintiffs and Respondents,

v.

ROB BONTA, in his official capacity as Attorney General of California, et al.,
Respondents/Defendants and Appellants.

On Appeal From The Superior Court Of San Diego County
Case No. 37-2020-00030178-CU-MC-CTL
The Hon. John S. Meyer, Judge Presiding (Dept. C-64)

RESPONDENTS' BRIEF

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Respondents hereby certify that they are not aware of any person or entity that must be listed under the provisions of California Rule of Court 8.208(e).

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INTRODUCTION

Appellants (collectively "DOJ")[1] control when firearms dealers may transfer firearms. Normally, DOJ completes a background check within the statutory 10-day waiting period, and it notifies the dealer that it may transfer the gun on the tenth day following the application to purchase. California law allows DOJ to delay delivery of a firearm beyond the 10-day period only if a background check conducted within the initial 10-day window affirmatively shows that the purchaser might be ineligible—based on (1) their mental health record, (2) their criminal record, or (3) having already purchased a handgun in the previous 30 days—but DOJ has not yet confirmed the potential disqualifier. Penal Code § 28220(f)(1)(A). If one of those three reasons causes the delay, DOJ has up to 30 days from the date of application to resolve the background check; the transferee is entitled to take possession of the firearm as soon as their background check is complete, or at the end of 30 days, whichever is sooner—presuming the check has not revealed that they are in fact prohibited from possessing firearms under state or federal law. *Id.*, at (f)(4).

Plaintiffs brought this case because DOJ announced during the Covid pandemic that it actually had the statutory authority to delay firearm transactions for reasons not specified in Section 28220. In early April 2020, DOJ released a statement claiming that Section 28220 gave it general authority to expand the statutory 10-day waiting period for all firearm transactions, up to 30 days. Citing reduced staffing due to the COVID-19 pandemic, DOJ advised that background checks may no longer be performed during the initial 10-day waiting period. In the ensuing months, as firearm

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[1] Appellants include Attorney General Rob Bonta and the Director of DOJ's Bureau of Firearms (now Alison Mendoza) sued in their official capacities, and the California Department of Justice. This brief refers to Appellants collectively as "DOJ" for clarity.

demand increased in light of widespread civil unrest, DOJ failed to conduct background checks within the initial 10-day period as required, and they delayed over 220,000 transactions beyond the 10-day waiting period due to claimed administrative burden—not one of the bases for delay authorized by Section 28220. In short, DOJ conducted background checks when it got around to it. The superior court correctly found that DOJ did not have the authority it claimed under Section 28220.

DOJ's lead strategy here (as below) is to avoid defending its statutory interpretation on the merits by crying mootness. The case is not (and was not) moot simply because the pandemic is over and DOJ's current staffing allows it to comply with Section 28220. The superior court's order continues to govern: DOJ still may not delay transactions for reasons not specified in Section 28220(f). Thus, the fundamental issue in the case—the proper scope of DOJ's authority to delay firearms beyond the 10-day waiting period—remains live, notwithstanding whether there are any current delays. Indeed, contrary to DOJ's assertions that its violation of Section 28220 was necessary because Covid presented a "once-in-a-lifetime" confluence of events, DOJ argues repeatedly that it needs the flexibility to take exactly the same action the next time it faces an "unpredictable situation" or future "emergency." This appeal is not moot.

Even if this dispute were somehow considered moot, California courts have routinely found exceptions to mootness when, as here, a case challenges the authority of statewide officials and raises questions of broad public interest where judicial resolution can set future controversies to rest. The parties hotly dispute the scope of DOJ's authority to delay firearm transactions, which is unquestionably a matter of broad public interest. And DOJ's practice of delaying based on administrative convenience in the event of an "unpredictable situation" is surely capable of repetition: if it weren't,

DOJ would not cling to the argument that it urgently needs the reserved authority to delay.

Turning to the merits, DOJ announced that it has authority to take "up to 30 days" to conduct a background check under Section 28220(f), and it proceeded to act on that asserted power by delaying over 220,000 firearm transactions for a reason not authorized by the statute—namely, its administrative burden. DOJ has no authority to add to the three (and only three) circumstances allowing it to delay a firearm transaction beyond the 10-day waiting period. The superior court properly declared that DOJ's practice of delaying transactions "absent a statutory basis" in Section 28220(f)(1)(A) was unlawful. And it properly issued a writ mandating that DOJ may not, in the future, delay firearms transactions "except where [DOJ] compl[ies] with" Section 28220(f)(1)(A).

DOJ also adopted a backup argument that contradicts its claim to a reserved power to delay background checks based on administrative burden: It says compliance with the text of Section 82220(f) should have been excused as "impossible" by judicial interpretation of an implied exception to the statute. The "impossibility" canon does not apply here because implying a fourth exception based on administrative burden is not consistent with the Legislature's "manifest" intent. The statutory language demonstrates the Legislature's intent to allow only three specific circumstances to delay the 10-day waiting period. Moreover, the superior court did not find that DOJ's evidence supported an impossibility showing and this was not clearly erroneous. DOJ did not provide adequate staffing to perform the background checks because, as it said at the time, it believed the statute didn't require that. This is not an "impossibility" case.

The judgment should be affirmed.

STATEMENT OF THE CASE

A. California's Statutes And DOJ's Own Regulations Require DOJ To Conduct Background Checks Within The First 10 Days Following A Firearm Transfer Application And The Firearm To Be Released Absent a Permissible Delay or Denial.

California imposes a 10-day waiting period before a buyer, transferee, or loanee can take possession of their firearm. Penal Code §§ 26815(a); 27540(a). The waiting period is implemented by restricting firearms dealers' authority to deliver a firearm. This waiting period is imposed (in part) so that state authorities can conduct a background check before a firearm is delivered. *See Silvester v. Harris*, 843 F.3d 816, 823–24 (9th Cir. 2016). Firearm transaction applications are processed through DOJ's Dealer Record of Sale Entry System, or "DES"—the computerized, point-of-sale application system that firearms dealers use to submit firearm transaction applications to DOJ's Bureau of Firearms.[2]

In California, all non-exempt individuals—*i.e.*, ordinary State citizens—must purchase or otherwise transfer and receive firearms through a licensed firearms dealer. Penal Code §§ 27545, 28050. Whether a proposed acquisition involves a purchase or transfer, the person seeking to acquire a firearm is subject to a background check conducted by the DOJ. *See* Penal Code § 28220. However, the background check need not be completed for the firearm to ultimately be transferred. *See* Penal Code § 28220(f)(4).

When DOJ receives a DROS application, it is required to review state and federal databases to determine whether a prospective buyer is prohibited from possessing, receiving, owning, or purchasing a firearm. Penal Code § 28220(a)-(b). The background check focuses on the purchaser's criminal record and mental health history (to determine whether they are *prohibited*

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[2] Cal. Dep't of Justice, *DROS Entry System Log On*, https://des.doj.ca.gov/login.do.

from possessing a firearm under state or federal law). *See id.* A large percentage of background checks are complete within the first day (20% are automatically approved within an hour or two), and the overwhelming percentage of applications—over 99%—are ultimately approved. *Silvester v. Harris*, 41 F.Supp.3d 927, 953, 954 (E.D. Cal. 2014) (finding that over 99% of applications were approved each year during the period 2010-2014).

California law specifies the conditions allowing DOJ to delay a firearm transfer or restrict delivery of a firearm beyond the 10-day period after the DROS application is submitted. Under Section 28220(f), DOJ has authority to delay a firearm transaction beyond the 10-day waiting period *only* in three limited and expressly enumerated circumstances where its background check affirmatively reveals potentially disqualifying information and DOJ is "unable to ascertain" whether the purchaser is actually prohibited or ineligible before the waiting period concludes:

> 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 [who has purchased a handgun in the prior 30-day period], 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.

Penal Code § 28220(f)(1)(A).

When DOJ's background check uncovers specific, potentially prohibiting information, it is required to "immediately notify the dealer" of the reason for the delay and inform the purchaser about the delay. *Id.* at (f)(1)(A), (f)(1)(B), (f)(2). If DOJ subsequently determines a purchaser is not prohibited, it is required to "immediately notify" the dealer so it can transfer the firearm to the purchaser. *Id.* at (f)(3)(A). If DOJ is "unable to ascertain 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" within 30 days from the date of purchase, it must "immediately notify" the dealer that it can transfer the firearm. *Id.* at (f)(4). In short, Section 28220 allows the DOJ to delay the transfer of a firearm beyond the 10-day waiting period only if the background check conducted in those first 10 days reveals that a purchaser may be prohibited or ineligible, and that the total background check period cannot exceed 30 days from the date of purchase.

Consistent with this statutory requirement, DOJ's own regulations provide that, when a dealer submits a firearm transaction through DROS, the DES transaction record is set to "Pending" while DOJ conducts a background check. 11 CCR § 4230(a). And "[a] 'Pending' status shall be designated when the purchaser's eligibility is under review during the 10-day waiting period." *Id*. at (b)(2)(A) (emphasis added). Further, "[a] 'Delayed' status

shall be designated when the Department is unable to determine the purchaser's eligibility within the 10-day waiting period." *Id*. at (b)(2)(B) (emphasis added). DOJ may be unable to make an eligibility determination for a variety of reasons. For example, DOJ analysts may need to investigate the disposition of a criminal arrest or review mental health records to determine whether a purchaser is eligible to own and possess a firearm. *See Silvester*, 41 F.Supp.3d at 951–52.

Section 4230 further commands that, "[i]f the Department determines the firearm [purchaser] is not prohibited by state or federal law from purchasing or possessing firearms, immediately following the conclusion of the ten-day waiting period, the status of the DES transaction record will change from 'Pending' to 'Approved.'" 11 CCR § 4230(a) (emphasis added).

In sum, there is no basis for DOJ to leave an individual in a "Pending" status after the expiration of the 10-day waiting period and prevent licensed dealers from transferring a firearm. The only basis for DOJ to delay a transaction—and assign it a "Delayed" status in DES—is DOJ's determination, after performing the background check within the first 10 days, that it is unable to determine whether a proposed purchaser or transferee is prohibited or ineligible based on specific, identifiable information that meets one of the statutorily defined circumstances.

B. When Covid Hit, DOJ Claimed The Authority To Suspend Section 28220 And Used The DES System To Extend The Waiting Period For Up To 30 Days.

Since early in the COVID-19 pandemic, DOJ acknowledged that the public health emergency did not suspend its legal obligations and provided accommodations for employees to continue their work safely. In a March 16, 2020 memorandum setting forth the agency's remote work policy, DOJ emphasized that it "maintains its responsibility to serve the People of California despite cases of emergency, including public health crises. Thus,

we recognize that ensuring the continuity of critical departmental functions is necessary and may require temporary modification of work arrangements." Cal. Dep't of Justice, *Emergency Teleworking Policy – Coronavirus (COVID-19)* (March 16, 2020) ("Teleworking Policy"). To that end, DOJ's Teleworking Policy was meant "to serve multiple purposes, including ensuring critical Departmental functions continue; reducing on-site staff throughout statewide offices; providing employees with flexible work options; and addressing school closures occurring statewide." *Id.*

In April 2020, however, DOJ struck a different chord when it came to firearms and announced that the pandemic was causing it to, in essence, suspend the duties imposed on it by Section 28220. Because of the logistical difficulties imposed by COVID-19, DOJ said it may or may not conduct background checks within 10 days of receiving a firearm transaction application as required under Section 28220, and it would henceforth take up to 30 days to process transactions. In a notification sent to firearms dealers through the DROS system and published on the Bureau of Firearms website, DOJ claimed that Section 28220(f) gives it the authority to delay a firearm transaction up to 30 days for any reason. The notification 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.

Cal. Dep't of Justice, Bureau of Firearms, *Firearms and Ammunition Purchaser Information*, https://oag.ca.gov/firearms ("Policy Statement"), AA at 124–125 (emphasis added).

So, while DOJ professed in its Teleworking Policy that it was "necessary" to manage staffing to "ensur[e] the continuity of critical departmental functions," processing background checks for firearms transactions wasn't one of them. DOJ soon began failing to conduct background checks within 10 days as required by Section 28220. DOJ kept purchasers in a "Pending" status—preventing the dealer from transferring the firearm to the recipient—until eventually conducting the check it was supposed to conduct in the first 10 days. In doing so, DOJ unlawfully delayed delivery of firearms to hundreds of thousands of law-abiding, responsible Californians who are eligible—and constitutionally entitled—to possess firearms under state and federal law.

C. Defendants Deploy Their Unlawful Policy To Delay Over 220,000 Firearm Transactions.

DOJ used its DES system to delay transactions by preventing dealers from delivering firearms to purchasers. Dealers are not allowed to deliver a firearm until DOJ "releases" a transaction in the system—either because DOJ affirmatively approved the transaction or the purchaser's status remains "undetermined" after 30 days under section 28220(f)(4). 11 CCR § 4230(b)(1); *see also* 11 CCR § 4230(b)(2). And so long as a transaction's status is "Pending," the DES system does not provide the dealer with an option to "Deliver Gun"—the transaction remains stalled. When DOJ releases a transaction, the DES system allows the dealer to select a button to "Deliver Gun" and complete delivery of the firearm. Under its policy, DOJ

used the DES system to delay transactions by leaving them in limbo. DOJ left hundreds of thousands of transactions "Pending" beyond the 10-day waiting period while background checks remained unperformed, which blocked dealers from delivering the firearm. Appellant's Appendix ("AA") at 72–73, 84–85, 89 (Duvernay Decl., Ex. 1, DOJ Resp. SI 1, 10, 13). And DOJ admits that it did not notify delayed purchasers or the subject firearms dealers that the transactions would be delayed past the 10-day waiting period or inform them of the reason for the delay. AA at 80–81, 84–88 (Duvernay Decl., Ex. 1, DOJ Resp. SI 7, 10, 11), 104 (Duvernay Decl., Ex. 2, DOJ Resp FI at 9:14–20).

Firearm Transactions, March 4–Aug. 27, 2020[3]	
670,032	Total Applications
233,376	Not complete within 10 days
8,827	Statutorily delayed within 10 days
6,855	Statutorily delayed after 10 days
214,082	Approved after 10 days
3,612	Denied after 10 days

AA at 72–73 (Duvernay Decl., Ex. 1, DOJ Resp. SI 1). Thus, DOJ delayed 224,549 transactions without complying with Section 28220(f), which amounts to 33.51% of all DROS applications submitted between March 4 and August 27, 2020. Over 95 percent of these applications were ultimately approved within the thirty-day period—and just 1.6 percent of the transactions were denied. Based on DOJ's discovery responses, the average

[3] Total transaction numbers exclude 12,920 applications that were cancelled or that were rejected because of an issue with the purchaser's DMV records. *See* AA at 73 (Duvernay Decl., Ex. 1, DOJ Resp. SI 1, n.1).

length of delay was 13 days, over 75,000 transactions were delayed past 13 days, and over 50,000 transactions stretched past 15 days.[4]

Plaintiffs' delays were illustrative. On April 10, 2020, Plaintiff Mauro Campos submitted an application to purchase a handgun and a rifle through Firearms Unknown. AA at 19–20 (Ver. Compl., ¶ 47). Despite the fact that DOJ knew[5] that Campos was not prohibited from purchasing a firearm—he holds a current and valid certificate of eligibility from DOJ, he is a DOJ-certified firearms safety instructor, and he has firearms registered in the State's Automated Firearms System (or "AFS")—Campos' transaction was delayed until April 28 (18 days), when DOJ permitted Firearms Unknown to release the firearms through the DROS system. AA at 10–11, 19–20 (Ver. Compl., ¶¶ 15, 47). Campos' status remained "Pending" after the expiration of the 10-day waiting period, and DOJ did not notify Campos or Firearms Unknown that the transaction would be delayed past the 10-day waiting period or inform them of the reason for the delay. *Id.*

On April 9, 2020, Plaintiff Skyler Callahan-Miller submitted an application to purchase a handgun through Firearms Unknown. This was Callahan-Miller's first handgun purchase; he bought the firearm to defend the home he shares with his wife, who currently serves in the United States Marine Corps. AA at 20 (Ver. Compl., ¶ 48). Callahan-Miller's transaction was delayed until April 25 (16 days), when DOJ permitted Firearms Unknown to release the firearm through the DROS system. AA at 20 (Ver. Compl., ¶ 48.) Like Campos, Callahan-Miller's status remained "Pending"

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[4] Specifically, the arithmetic mean of the number of days-to-decision on all DROS transactions was 12.95 days, and 49,117 transactions were delayed 15 or more days. AA at 68 (Duvernay Decl., ¶ 6 (detailing calculations from DOJ-produced spreadsheets of DROS transaction data)).

[5] DOJ has access to, and indeed is required to compile and maintain, many databases relevant to individuals' criminal history and firearms eligibility. *See*, *e.g.*, Penal Code §§ 11105, 11106.

after the expiration of the 10-day waiting period, and DOJ did notify Callahan-Miller or Firearms Unknown that the transaction would be delayed or inform them of the reason for the delay. *Id.*

Plaintiffs Firearms Unknown and PWG likewise faced significant delays, which impacted hundreds of transactions for their customers. AA at 20 (Ver. Compl., ¶¶ 49, 50). And the five firearms advocacy organizations[6] who are Plaintiffs have members—including firearms dealers and individual firearm purchasers or transferees—who have been harmed by DOJ's policy. AA at 12–13 (Ver. Compl., ¶¶ 21–25).

Throughout the course of the lower court litigation, the challenged policy remained in effect and was posted on DOJ's Bureau of Firearms website. Cal. Dep't of Justice, Bureau of Firearms, https://oag.ca.gov/firearms; *see* AA at 69, 124–25 (Duvernay Decl., Ex. 4, pp. 4–5), 397:7–8 (Reply Br.).

PROCEDURAL HISTORY

Respondents filed this lawsuit in August 2020. AA at 6–36 (Verified Petition for Writ of Mandate and Complaint for Declaratory, Injunctive, and Other Relief). After completing discovery, Respondents filed their merits brief on May 27, 2022. AA at 48–132. DOJ filed its opposition materials on June 17 (AA at 133–390), and Respondents replied on July 11 (AA at 391–408). On July 22, 2022, the trial court held a hearing on the merits and issued a minute order granting Respondents' petition for writ of mandate. *See* AA at 415–417.

The trial court first ruled that DOJ's "mootness argument [was] not compelling." AA at 415. In distinguishing DOJ's authority, the court noted that "the record indicates respondents have not rescinded the challenged

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[6] Respondents San Diego Gun Owners PAC; California Gun Rights Foundation; Second Amendment Foundation; Firearms Policy Foundation; and Firearms Policy Coalition, Inc.

policy—i.e., the Department continues to claim that section 28220(f) provides up to 30 days to complete firearm background checks for any reason. The record indicates the challenged policy remained publicly posted as recent as May 26, 2022, and petitioners assert it continues to remain live on the website." *Id.*

On the merits, the trial rejected DOJ's argument that it "has no explicit deadline to conduct background checks within the 10-day waiting period, such that their interpretation of an upper 30-day limit under Penal Code section 28220 is reasonable." AA at 416. This argument was "not persuasive" because "[b]oth the statutory and regulatory scheme show the Department's background check review is based on a 10-day waiting period." *Id.*

This conclusion was bolstered by "[a] plain reading of [Section 28220(f)'s] language" which "shows that the Legislature added the three specific circumstances for which the Department may delay releasing firearms when background checks are not completed." AA at 416. The court explained that DOJ's argument to the contrary ignored the statutory structure:

> [C]ontrary to [DOJ's] argument, these specified situations do not show the Legislature intended to provide the Department authority to delay release for any reason that background checks are not completed. Had the Legislature wished to create a broader allowance for a 30-day delay whenever the DOJ determined additional time is needed, it could have done so. It did not. Consequently, the Court agrees with petitioners' interpretation of the statute – i.e., that the 30-day delay applies only for the specific circumstances enumerated in the statute.

Id.

Finally, the trial court rejected DOJ's argument that the statute permitted "an implied exception for noncompliance" under the circumstances. AA at 416–17. DOJ's plea for an implied exception could not be squared with the agency's insistence that they *already* had up to 30 days

to conduct background checks. AA at. 417 (explaining that DOJ "[did] not take the position they knew they were required to comply . . . and yet could not do so due to impossible circumstances created by the pandemic," but instead claimed to have "authority to wait more than 10 days to conduct the background checks whenever [DOJ] determines more time is needed"). The court then pointed out that DOJ could have sought relief from the Governor under the Emergency Services Act if justified by the pandemic. *Id.*

On August 3, 2022, the trial court issued a judgment granting the petition, which included a finding and declaration that "[DOJ's] policy and practice of delaying firearm transactions beyond the conclusion of the waiting period described in Penal Code sections 26815 and 27540, absent a statutory basis to delay the transaction as permitted by Penal Code section 28220, subdivision (f)(1)(A), is unlawful." AA at 413.

The court further directed that a writ of mandate issue directing DOJ "to cease [its] policy and practice of delaying firearm transactions beyond the conclusion of the waiting period described in Penal Code sections 26815 and 27540 when [DOJ has] been unable to determine a purchaser's eligibility to purchase a firearm, absent a statutory basis to delay the transaction as permitted by Penal Code section 28220, subdivision (f)(1)(A). If after the conclusion of the waiting period described in Penal Code sections 26815 and 27540 [DOJ has] been unable to determine a purchaser's eligibility to purchase a firearm, [DOJ] shall allow delivery of the firearm, except where [DOJ] compl[ies] with Penal Code section 28220, subdivision (f)(1)(A)." AA at 413.

STANDARD OF REVIEW

"On appeal, a judgment of the trial court is presumed to be correct," and "if a judgment is correct on any theory, the appellate court will affirm it regardless of the trial court's reasoning." *Cahill v. San Diego Gas & Elec. Co.* (2011) 194 Cal. App. 4th 939, 956; *see also Denham v. Super. Ct.* (1970)

2 Cal.3d 557, 564 ("A judgment or order of the lower court is *presumed* correct," and "error must be affirmatively shown" by the appellant (citations omitted)). Respondents sought relief below in the form of both a writ of mandate and a declaratory judgment.

A writ of mandate "may be issued by any court . . . to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station . . . ." Code Civ. Proc. § 1085(a). To obtain such a writ, the petitioner must show (1) a clear, present, ministerial duty on the part of the respondent; and (2) a clear, present, and beneficial right in the petitioner to the performance of that duty. *Santa Clara Cnty. Counsel Attys. Ass'n v. Woodside* (1994) 7 Cal.4th 525, 539–40. "Mandamus relief is also available to 'correct those acts and decisions of administrative agencies which are in violation of law.'" *Transdyn/Cresci v. City & Cnty. of San Francisco* (1999) 72 Cal.App.4th 746, 752 (quoting *Bodinson Mfg. Co. v. Cal. Emp't Comm'n* (1941) 17 Cal.2d 321, 329); *see also Great W. Sav. & Loan Ass'n v. City of Los Angeles* (1973) 31 Cal.App.3d 403, 413 (mandamus is appropriate "[w]here a statute or ordinance clearly defines the specific duties or course of conduct that a governing body must take, that course of conduct becomes mandatory and eliminates any element of discretion").

A declaratory judgment is likewise appropriate to address and correct DOJ's failure to comply with the statute. "Declaratory relief is appropriate to obtain judicial clarification of the parties' rights and obligations under applicable law," which includes the authority to address policies of administrative agencies that violate state law. *Californians for Native Salmon etc. Ass'n v. Dep't of Forestry* (1990) 221 Cal.App.3d 1419, 1427, 1429–30; *see also, e.g.*, *Alameda Cnty. Land Use Ass'n v. City of Hayward* (1995) 38 Cal.App.4th 1716, 1723 ("An action for declaratory relief lies when the parties are in fundamental disagreement over the construction of particular

legislation, or they dispute whether a public entity has engaged in conduct or established policies in violation of applicable law.").

"When an appellate court reviews a trial court's judgment on a petition for a traditional writ of mandate, it applies the substantial evidence test to the trial court's findings of fact and independently reviews the trial court's conclusions on questions of law, which include the interpretation of a statute and its application to undisputed facts." *Cal. Pub. Recs. Rsch., Inc. v. Cnty. of Stanislaus* (2016) 246 Cal.App.4th 1432, 1443. "The substantial evidence test applies to both express and implied findings of fact." *Id.* "Similar standards apply when [courts of appeal] consider whether a determination is proper in an action for declaratory relief." *City of Oakland v. Oakland Police & Fire Ret. Sys.* (2014) 224 Cal.App.4th 210, 226; *see id.* ("review of declaratory relief is generally for abuse of discretion; however, when facts are undisputed and issue is one of statutory interpretation, independent judgment/de novo review appropriate") (citation omitted).

Finally, to the extent this case "poses a pure question of statutory interpretation," it is "subject to independent review." *Lopez v. Sony Elecs., Inc.* (2018) 5 Cal.5th 627, 633.

ARGUMENT

I. The Case Is Not Moot: DOJ Continues To Defend Its Interpretation Of Penal Code § 28220 And Its Authority To Take Identical Action In The Future When It Is "Unable" To Complete Background Checks Within 10 Days.

DOJ's lead argument is that the case is moot because there are no current delays in processing firearms transactions. Appellant's Opening Brief ("AOB") at 32–35. Not so. the fact that there may be no delays right now does not moot this controversy. The superior court's order limits DOJ's ability to expand the three circumstances in which it can delay firearm purchases based on an inability to complete a background check—an issue not limited to the Covid pandemic, as DOJ's protests about future

"unpredictable" scenarios illustrate. Thus, the fundamental issue in the case—DOJ's authority to delay firearms beyond the 10-day waiting period for reasons other than Section 28220(f)'s enumerated reasons—remains live.

A. General Principles Confirm The Case Is Not Moot.

The Court's analysis of mootness is guided by the same considerations when addressing either the writ of mandate or the claim for declaratory relief. "Although writs of mandate and judicial declarations are different types of relief with different requirements, they both require an actual controversy and they both contain a mootness exception for issues of public importance that are likely to recur." *Roger v. Cnty. of Riverside* (2020) 44 Cal.App.5th 510, 529. "The pivotal question in determining if a case is moot is . . . whether the court can grant the plaintiff any effectual relief." *Cuenca v. Cohen* (2017) 8 Cal.App.5th 200, 217. And where a governmental entity adopts and enforces a policy or interpretation of law, a challenge to that policy or practice remains ripe where a court "do[es] not have to guess" how that policy would be applied in a particular case and there is a "reasonable expectation" that the challenged practice will be repeated in the future. *Communities for a Better Env't v. State Energy Res. Conservation & Dev. Comm'n* (2017) 19 Cal.App.5th 725, 736–38.

This appeal is not moot because, just as DOJ worries here, the superior court's order prevents DOJ from exercising its putative reserved power to delay transactions in *any situation*, not just in Covid. As such, this case is similar to *Newsom v. Super. Ct.* (2021) 63 Cal.App.5th 1099, where petitioners challenged multiple Covid-related executive orders. While much of the superior court's writ was mooted by legislation, revocation of executive orders, and the completion of the 2020 election, its injunction and declaratory relief order were not entirely mooted, since they "govern[ed]

existing and future emergency executive orders." *Id*. at 1110–11.[7] Here, as in *Newsom*, there remains "an actual controversy regarding the scope of [DOJ's] authority" to create unenumerated exceptions to Section 28220(f). *Id.* at 1111. *See also Cal. Charter Schools Ass'n v. Los Angeles Unified Sch. Dist.* (2015) 60 Cal.4th 1221, 1233–34 ("[a]lthough this litigation primarily concerned the allocation of facilities to charter schools in the 2012–2013 school year, the trial court's declaratory relief order . . . will govern responses to future facilities requests," so case was not moot on appeal).

The court's decision in *Env't Def. Project of Sierra Cnty. v. Cnty. of Sierra* (2008) 158 Cal.App.4th 877 is similarly instructive. In that case, the plaintiff brought various claims arising out of a county's consideration of a developer's application for approval of a tentative map. After the county approved the map, the plaintiff dismissed its mandamus claims but pressed on with its claim seeking a declaration that the county violated the Government Code by failing to provide adequate notice of the board of supervisors' hearing. *Id.* at 881–84. The appellate court held that the controversy remained live, despite the fact that the specific project spurring the lawsuit was no longer at issue. *Id.* at 884–88. Specifically, the dispute remained ripe because "[t]here was and is an 'actual controversy' between the parties as to whether" the county's zoning practice violated state law "given their different interpretations of the Government Code." *Id.* 886. This conclusion was cemented because the county "made clear that it [would] continue" the practice "in the future." *Id.*

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[7] To be sure, in exercising its discretion to consider the merits in *Newsom* the third district noted that the Governor "clearly intend[ed] to continue [to issue and implement executive orders] during the COVID-19 state of emergency." 63 Cal.App.5th at 1111. To support its determination that there was still an actual controversy, the court cited *Env't Def. Project of Sierra Cnty. v. Cnty. of Sierra* (2008) 158 Cal.App.4th 877, which, as discussed below, confirms that a controversy remains live where the parties disagree over the scope of a government agency's authority and the agency continues to defend its ability to continue the disputed practice in the future.

The same is true here. There is an ongoing dispute over the lawfulness of DOJ's practice of delaying firearm transfers "given [the parties'] different interpretations of" state law: DOJ continues to argue that it should be allowed to take the same actions in the future if it is unable to complete background checks within the 10-day waiting period for reasons not enumerated in Section 28220(f). *See* AOB at 12, 27, 40, and 45; *see also Cal. Alliance for Util. Safety & Educ. v. City of San Diego* (1997) 56 Cal.App.4th 1024, 1030 (courts may presume a challenged practice will continue in the future when a public agency fails to concede its actions were unlawful).

DOJ embellishes its mootness argument by downplaying the magnitude of its violation and claiming it did not really adopt a "policy"—rather, the trial court "misinterpreted" a "statement on [DOJ's] website." AOB at 34. DOJ claims—inexplicably—that its Policy Statement "was not asserting its ability to take 30 days, for whatever reason to conduct background checks." AOB at 35. But the statement of policy on DOJ's website was plain as day: It asserted categorically that "[u]nder 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." Policy Statement, *supra*. DOJ advised purchasers and dealers that it would take that time if needed, and then DOJ followed through on its announcement by delaying more than 220,000 transactions beyond the 10-day period. While DOJ doesn't need to act on its interpretation of Section 28220 right now, since it currently can keep up with the pace of firearm transactions, DOJ leaves no doubt that it wants the power to dust it off in the future.

All of DOJ's minimizing obscures the critical factors on which the mootness test turns: DOJ took action based on a disputed statutory authority to delay firearm transfers for reasons not enumerated in Section 28220(f); it continues to defend the legality of that action; and it argues that this Court should recognize DOJ's legal authority to continue taking that action in the

future. The trial court correctly recognized that, under these circumstances, the dispute is not moot. AA at 415; *See*, *e.g.*, *Ctr. for Loc. Gov't Accountability v. City of San Diego* (2016) 247 Cal.App.4th 1146, 1157 (challenge to city's authority to permit public comment at council meetings was not moot even though city had stopped challenged practice when cessation "did not equate to a change in the City's legal position"); *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 913 (case was not moot because city continued to defend legality of its actions on appeal so "issues remain[ed] as to the degree of compliance required under" state law).

This dispute is not moot.

B. Even If This Case Were Considered Moot (It Is Not), The Exceptions To Mootness Confirm That The Court Should Consider The Merits.

Even if these authorities were not dispositive of the mootness issue, the dispute remains justiciable under each of the three discretionary exceptions to mootness. *Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga* (2000) 82 Cal.App.4th 473, 479–80.

1. This Case Presents An Issue Of Broad Public Interest Regarding DOJ's Authority To Delay Firearm Transactions.

First, the Court should reach the merits of this case because it "involves a matter of continuing public interest" and the dispute "is likely to recur." *Californians for Fair Representation—No on 77 v. Super. Ct.* (2006) 138 Cal.App.4th 15, 22. California courts have routinely rejected mootness arguments when considering the authority of statewide officials that raise questions of broad public interest where judicial resolution can set future controversies to rest. And this Court has long recognized that it "should not avoid the resolution of important and well litigated controversies arising from situations which are 'capable of repetition, yet evading review.'" *In re Mark C.* (1992) 7 Cal.App.4th 433, 440 (quoting *In re William M.* (1970) 3

Cal.3d 16, 23 n.14); *see also Cal. Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 933 (courts may properly address issues that are "technically moot" where they "present[] important questions of continuing public interest that may evade review").

In *White v. Davis* (2003) 30 Cal.4th 528, for example, the California Supreme Court reached the merits of a dispute over the State Controller's authority to continue paying state employees during a budget impasse. This issue was technically moot by the time it reached the Court because the Legislature had passed the budget bill for the years in question: The dispute arose from the failure to pass a timely budget bill in 1997 and 1998, but the case took several years to wind its way through the courts. *Id.* at 533–34. The Supreme Court granted review and exercised its discretion to consider the merits, explaining "the question of what payments the Controller is authorized to make during a budget impasse is the type of issue that arises frequently but often may evade timely appellate review." *Id*. at 563. Accordingly, the Court concluded that it was "appropriate to address the state employee salary issue that has been briefed in this court, in order to provide guidance to the State Controller and other public officials in the event of a future budget impasse." *Id.*

To a similar end, the court of appeal in *Gilb v. Chiang* (2010) 186 Cal.App.4th 444, relied on *White* to apply the public-interest exception to mootness in an inter-agency dispute over the Controller's authority. There, like here, the parties had an ongoing dispute over their competing interpretations of state law, and the Controller had "made it clear" that he would pursue the same course of conduct in a future controversy. *Id.* at 460.

These cases confirm that the public interest cuts in favor of considering the merits where there is an ongoing controversy over the scope of a state official's authority and the court can provide guidance to prevent future disputes. *White* and *Gilb* are not outliers in this regard. *See, e.g.,*

Steinberg v. Chiang (2014) 223 Cal.App.4th 338, 344 (rejecting mootness argument where the court did "not need to guess at any additional facts" to resolve the case and State Controller "continu[ed] to litigate his authority" under state law).

DOJ's core argument to the contrary is that the delays were "unique" to the beginning of the pandemic and are therefore unlikely to recur. AA at 36–37. But this case isn't resolved simply because Covid is gone; rather, DOJ asserted—and continues to claim—statutory authority to take up to 30 days to conduct background checks when it is "unable" to complete them (for reasons different than the reasons the Legislature allows DOJ to delay them) within 10 days. DOJ has not backed down from this arrogation of power, it just claims that it doesn't need to exercise the power right now. But nothing stops DOJ from relying on this asserted authority again in the future should it be expedient to do so.

Indeed, contrary to its assurance that its non-policy policy arose from "a once-in-a-lifetime confluence of events," AOB at 43, DOJ says it must be allowed to act on its reading of Section 28220 in the future. After all, it could face "emergency situations in which the Department is unable to complete the background check due to circumstances beyond its control." *Id*. at 12. Bureaucratic claims that external forces prevent the completion of work are hardly once-in-a-lifetime events.

DOJ also assures that "if the Department again was forced to resume" its practice of violating Section 28220, "Petitioners could file a writ and seek an emergency injunction." AOB at 40–41. But "emergency" situations by their very nature are typically very short-term events. By the time this putative future litigation reached a merits determination, DOJ could be counted on to argue that that case was moot too. DOJ thus confirms this dispute is capable of repetition. This Court "should not avoid the resolution of important and well litigated controversies arising from situations which

are 'capable of repetition, yet evading review.'" *In re Mark C.*, 7 Cal.App.4th at 440 (citation omitted).

So even if this dispute could be considered moot, the Court should nevertheless decide the merits because "'the appeal raises issues of continuing public importance.'" *In re Marriage of LaMusga* (2004) 32 Cal.4th 1072, 1086 (citation omitted). DOJ's authority under the state's waiting period laws is a matter of significant public importance. There are well over a million firearm transactions in California each year.[8] California's background check implicates the right to keep and bear arms protected by the Second Amendment and, at 10 days, California's waiting period is already the second-longest among the minority of states that impose such regulations. DOJ's assertion that it can take "up to 30 days" to complete background checks, for whatever reason it deems necessary (and contrary to the Legislature's allowance for only three reasons for such delay), impacts the constitutional rights of many Californians—as evidenced by the nearly quarter-million people who suffered delays in 2020.

The pandemic-related cases DOJ relies on further illustrate why this case is not moot. The Ninth Circuit's opinion in *Brach v. Newsom* (9th Cir. 2022) 38 F.4th 6, provides a useful counterexample. In that case, a group of parents brought a constitutional challenge to the aspects of California's Covid-19 "Reopening Framework" and related executive orders that restricted public schools' ability to reopen for in-person instruction. *Id.* at 9–10. By the time the dispute reached the Ninth Circuit, however, Governor Newsom "ha[d] rescinded the challenged executive orders" and "revoked" the reopening framework, such that "there [was] no longer any state order for

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[8] *See, e.g.*, Cal. Dep't of Justice, *Gun Sales in California, 1996–2020*, https://openjustice.doj.ca.gov/data-stories/gunsales-2020 (detailing yearly sales figures in California); Federal Bureau of Investigation, *NICS Firearm Background Checks: Month/Year by State*, available at bit.ly/3MYygud.

the court to declare unconstitutional or to enjoin." *Id.* at 11. Accordingly, the court held that "[i]t could not be clearer that this case is moot." *Id.*

DOJ argues that the dispute here is similarly unlikely to recur because "[t]he delays that occurred in this case were as inextricably intertwined with the early days of the COVID epidemic as was the challenged blueprint in *Brach*." AOB at 38. Yet the government's position in *Brach* bears virtually no resemblance to DOJ's position here: "Most importantly, the State [in *Brach*] 'unequivocally renounced' the use of school orders in the future." 38 F.4th at 13 (citing *Am. Diabetes Ass'n v. U.S. Dep't of the Army* (9th Cir. 2019) 938 F.3d 1147, 1153). And, "[f]urther strengthening California's hand [was] the fact that its decision to reopen schools is 'entrenched' and not 'easily abandoned or altered in the future.'" *Id*. (citation omitted).

Here, of course, DOJ had no emergency power to take action in the first place, and it continues to defend its authority to delay firearm transactions apart from any pandemic-related justification. Not only has DOJ not "unequivocally renounced" its intention to delay transactions if it is unable to complete background checks for reasons not enumerated in Section 28220(f), DOJ argues it urgently needs this Court to affirm that power. In other words, its current practice—completing background checks within the 10-day period because it has adequate staffing—could be "easily abandoned or altered in the future." *Brach*, 38 F.4th at 13. The trial court thus correctly observed that *Brach* is distinguishable because DOJ "continues to claim that section 28220(f) provides up to 30 days to complete firearm background checks for any reason" that might cause DOJ to not complete a background check within the 10-day waiting period. AA at 415.

Cerletti v. Newsom is likewise distinguishable because it was a challenge to a one-time benefit program for Covid relief. (2021) 71 Cal.App.5th 760, 762–63. The trial court denied plaintiffs' application for a temporary restraining order to halt the distribution of payments, and by the

time the dispute reached the court of appeal the money had already been spent. *Id.* at 764–65. Because the program "provided for 'one-time' payments, and the payments were made more than a year ago," the temporary restraining order appeal was moot—particularly because the plaintiffs failed "to explain how time can be rewound and the funds recaptured." *Id.* at 766. This case, of course, presents a very different scenario: DOJ did not adopt a "one-time" policy to delay firearm transactions because of Covid. It has asserted and continues to defend an interpretation of California law that it has general authority to take "up to 30 days" to conduct a background check.[9]

2. The Controversy Is Likely To Recur Between The Parties.

Turning to the second discretionary exception to mootness, DOJ argues that Respondents have not shown the controversy is unlikely to recur "between the parties." AOB at 42–43.[10] To support this point, DOJ cites *Department of Water Resources Cases* (2021) 69 Cal.App.5th 265, 275, an odd choice since it supports Respondents. The court there held the case was not moot both because the dispute was likely to recur between the parties to the case, as well as between the state agency and other parties in the future.

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[9] Other pandemic-related cases have rejected mootness arguments where, like here, the scope of the government's authority has been challenged and that agency continued to defend the legality of its actions. *E.g.*, *Newsom, supra,* 63 Cal.App.5th at 1111 (even if case were "technically moot," court would exercise discretion to decide); *Cnty. of Los Angeles Dep't of Pub. Health v. Super. Ct.* (2021) 61 Cal.App.5th 478, 487 (challenge to county public health order not moot despite restriction being lifted because "[t]he County has made it clear that it may re-impose its prohibition on outdoor dining if the region faces another surge"); *Flores v. Garland* (9th Cir. 2021) 3 F.4th 1145, 1150 (challenge to agency's authority not moot in light of the government's "representation" that it may continue the policy "either during the current pandemic or a future public health emergency").

[10] While DOJ faults Respondents for "present[ing] no evidence that [the dispute] would recur between the parties," AOB at 43, the burden of establishing mootness is on DOJ. "Generally, the burden is on the party claiming mootness to establish that an appeal is moot." *Becerra v. McClatchy Co.* (2021) 69 Cal App.5th 913, 927 n.4.

Id. at 275 (concluding "that the issue presented here is likely to recur both between these parties and between [Department of Water Resources] and other counties"). In any event, several of the Respondents here are likely to be parties in a future controversy when DOJ relies on its purported authority to delay firearm transactions beyond the 10-day period: Respondents include four national and local organizations that represent firearm owners and firearm retailers throughout California and regularly engage in litigation to vindicate firearm rights. AA at 12–13 (Ver. Compl., ¶¶ 21–25).

3. This Court Should Resolve The Central Material Question In This Case.

Finally, the Court should proceed to the merits of this dispute because there are "material questions for the court's determination" remaining. *Eye Dog Found. v. State Bd. of Guide Dogs for Blind* (1967) 67 Cal.2d 536, 541 (considering merits of a licensing dispute despite agency's reinstatement of plaintiff's license because statutory interpretation question remained). DOJ argues that the material questions exception does not apply (AOB at 43–45), claiming that a judgment directing DOJ to cease a policy of delaying firearm transactions "is not meaningful on a day-to-day basis" because there are not usually delays beyond the 10-day period. AOB at 44. DOJ again tries to squeak past the core issue in the case, which is whether the agency has legal authority to delay a transaction beyond the 10-day period for a reason not enumerated in Section 28220(f). On that score, Respondents and DOJ are in fundamental disagreement over whether DOJ's conduct and policies violate applicable law. A judgment in this case provides a definitive answer to that question.

This case raises fundamentally *legal* questions, which distinguishes it from *MHC Operating Ltd. P'ship v. City of San Jose* (2003) 106 Cal.App.4th 204, which DOJ cites. AOB at 43–44. There, the court declined to exercise its discretion to reach a moot appeal under the public-interest exception

because the issues there were "essentially factual in nature and therefore require[d] resolution on a case-by-case basis," and "the fact-driven nature of the questions presented" made them unsuitable for review. *Id.* at 215. That consideration is not present here.

Rather, Plaintiffs sought declaratory relief concerning the DOJ's authority to delay firearm transactions, which squarely presented a material question for the trial court's determination. The "material questions" mootness exception applies where, as here, a dispute "encompass[es] . . . future and contingent legal rights" under applicable law. *Lake Lindero Homeowners Ass'n, Inc. v. Barone* (2023) 89 Cal.App.5th 834, 844; *accord Eye Dog Foundation*, 67 Cal. 2d at 541. And this exception applies to ensure that the court does "complete justice" in the case before it. *Bldg. a Better Redondo, Inc. v. City of Redondo Beach* (2012) 203 Cal. App. 4th 852, 867 (citing *Eye Dog Foundation*). A ruling on the merits puts an end to the dispute over DOJ's authority, which would otherwise be left in question.

DOJ's backup argument is that requiring it to comply with the judgment (and, therefore, with the statute as written) could lead to prohibited persons taking possession of firearms if there is a "natural disaster like a major earthquake or a cyberterrorism attack." AOB at 45. Setting aside the point that if DOJ's databases were literally disabled for an extended period, it would have a much stronger claim to "impossibility" (see below), the concern about prohibited persons taking possession of firearms does not refute, or even address, whether the case presents a "material question." It is a policy argument that the Legislature made a bad decision when it identified only three circumstances in Section 28220(f) that justify a delay beyond the 10-day waiting period. As set forth below, the appropriate recourse for an agency faced with an inability to comply with a statute is not to violate it, but to seek relief from the Legislature. *Ass'n for Retarded Citizens v. Dep't of Developmental Servs.* (1985) 38 Cal.3d 384, 394–95. An agency cannot

"substitute its judgment" for the Legislature's by "administratively rewrit[ing]" a statute. *Plan. & Conservation League v. Dep't of Fish & Game* (1997) 55 Cal.App.4th 479, 490.

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In sum, the case is not moot; even if it were, each of the discretionary exceptions to mootness favors resolving the appeal on the merits.

II. The Superior Court Correctly Ruled That DOJ Had No Authority To Delaying Firearm Transactions For Reasons Other Than Those Expressly Allowed By Statute.

In April 2020, DOJ no longer considered itself obligated to conduct a background check within the first 10 days of a purchase transaction or transfer. In its Policy Statement, DOJ claimed for the first time to possess expansive authority take "up to 30 days to complete background checks on purchasers of firearms and ammunition." AA at 124. And it acted on this new claim of authority: It delayed more than 224,000 transactions under its new policy. AA at 72–73 (Duvernay Decl., Ex. 1, DOJ Resp. SI 1). The superior court correctly found that this policy and practice violates Section 28220, as well as DOJ's own regulations.

A. Section 28220 Cannot Possibly Be Interpreted To Grant DOJ The Authority To Delay Background Checks Beyond 10 Days For Reasons Not Enumerated In The Statute.

DOJ violated California law by imposing delays that prevented law-abiding, responsible Californians from taking possession of their firearms in violation of the state's waiting period laws and DOJ's own regulations. DOJ argues here that "Section 28220 imposes no explicit deadline" for conducting background checks, and the 10-day waiting period is "is a minimum waiting period for acquisition by an approved purchaser, not a deadline for background checks." AOB at 47.[11] Under its theory, DOJ contends that Penal

[11] DOJ also cites a case to support the claim that "Courts have held that [DOJ] has a duty to complete its background checks." AOB at 46. But this

Code section 28220(f) provides DOJ "up to 30 days"—rather than the standard 10-day waiting period—to complete background checks if, for whatever reason, DOJ fails to complete them during the 10-day period. AA at 124 (Covid Policy Statement). It does not.

Section 28220(a) begins with a direction that, "[u]pon submission of firearm purchaser information, the Department shall examine its records . . . in order to determine if the purchaser . . . is prohibited by state or federal law from possessing" a firearm. Section 28220(f) goes on to specify that DOJ's authority to delay transactions beyond the 10-day waiting period is based solely on meeting one of the three criteria in Penal Code § 28220(f)(1)(A). Under this subsection, "[t]he 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.e.*, that the purchaser (1) may be prohibited based on their mental health record, (2) may be prohibited based on their criminal record, or (3) may be ineligible based on the one-handgun-every-30-days limitation. (emphasis added). Then, and only then, may DOJ delay the transaction and change the transaction's DES status to "Delayed," which allows for a total of 30 days from the initial acceptance of the application to investigate further and determine the eligibility of the purchaser.

Contrary to DOJ's assertion that the background check is wholly independent of the 10-day waiting period, Section 28220(f)'s use of the word "delay" in this context affirms that the default period for conducting a

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case involved wrongful death claims alleging that DOJ did not adequately fulfill its statutory duties after individuals with prohibiting records lawfully obtained a firearm and then used it to commit suicide. *Braman v. State of California* (1994) 28 Cal.App.4th 344; *see also Gray v. State of California* (1989) 207 Cal.App.3d 151 (similar claim based on purchaser who used firearm to commit murder). This line of authority provides no guidance here.

background check corresponds to the 10-day waiting period. If, as DOJ contends, it has 30 days to perform background checks, there would be no "delay" as of the 11th day. Nor would there be any need to "immediately" notify dealers to delay the transaction before expiration of the 10-day period.

Indeed, DOJ's own regulations governing DES align with Section 28220 and further demonstrate that the Legislature did not view the 10-day waiting period as a mere suggested time within which DOJ should complete its investigations. Under Section 4230, the DES status is set to "Pending" "when the purchaser's eligibility is under review **during the 10-day waiting period**," and the "Delayed" status is reserved for when DOJ "is unable to determine the purchaser's eligibility **within the 10-day waiting period**." 11 CCR § 4230(b)(2)(A), (B) (emphasis added).[12] Contrary to its argument here, DOJ itself recognized when writing its regulations that its background check corresponds to the 10-day waiting period.

DOJ now claims that subdivision (f) merely "describes three foreseeable and routine contexts where background checks are not able to be completed in ten days." AOB at 48. If the Legislature intended for these three situations to be mere examples, it would not have introduced that list by saying that that DOJ must immediately notify dealers that transactions are being delayed if the background checks "indicate one of the following." If the Legislature didn't intend for that list to be exclusive, it had a variety of ways to say so. *See, e.g.*, *Hassan v. Mercy Am. River Hosp.* (2003) 31 Cal.4th 709, 717 ("the word 'including' in a statute is 'ordinarily a term of enlargement rather than limitation'"); *People v. Arias* (2008) 45 Cal.4th 169,

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[12] DOJ has no authority by regulation to expand the bases for delaying transactions beyond the bases set out in Section 28220(f). "[A]n executive agency . . . has only as much rulemaking power as is invested in it by statute," *Carmel Valley Fire Prot. Dist. v. State* (2001) 25 Cal.4th 287, 299, and an agency cannot "under the guise of a rule . . . vary or enlarge the terms of" a statute. *Agnew v. State Bd. of Equalization* (1999) 21 Cal.4th 310, 321.

181 (explaining that "the proviso 'including, but not limited to' 'connotes an illustrative listing, one purposefully capable of enlargement'"). On the contrary, when a statute contains a "specific list or facially comprehensive treatment" governing a "specific grant[] of power," the negative implication is that such power "'is to be exercised only in the prescribed mode.'" *Howard Jarvis Taxpayers Ass'n v. Padilla* (2016) 62 Cal.4th 486, 514 (discussing the interpretive canon *expressio unius est exclusio alterius*, and quoting *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 196).

DOJ further contends that Section 28220 grants it expansive authority to delay transactions because the statute's "the central purpose . . . is to require the Department to perform background checks and not approve sales until that can be accomplished." AOB at 49. But DOJ fails to identify any language actually authorizing it to extend background checks beyond 10 days *other than* the three exceptions in subdivision (f)(1)(A)(i) through (iii)—and there is none. "An administrative agency must act within the powers conferred upon it by law and may not act in excess of those powers." *Am. Fed'n of Lab. v. Unemployment Ins. Appeals Bd.* (1996) 13 Cal.4th 1017, 1042. And "[a]dministrative action that is not authorized by, or is inconsistent with, acts of the Legislature is void." *Dep't of Developmental Servs.*, *supra*, 38 Cal.3d at 391; *accord Agric. Lab. Relations Bd. v. Super. Ct.* (1976) 16 Cal. 3d 392, 419 ("It is settled that 'administrative regulations that violate acts of the Legislature are void and no protestations that they are merely an exercise of administrative discretion can sanctify them.'" (citation omitted)).

DOJ claimed in its Policy Statement that subdivision (f)(4) was the source of that expansive authority: "Under Penal Code section 28220(f)(4), [it] has up to 30 days to complete background checks on purchasers of firearms and ammunition." AA at 124 (Policy Statement). But this is plainly

not so. Subdivision (f)(4) specifically ties the 30-day period to the enumerated bases in subdivision (f)(1) for "delaying" the 10-day period:

> If the department is unable to ascertain 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, **as described in paragraph (1)**, within 30 days of the dealer's original submission of purchaser information to the department pursuant to this section, the department shall immediately notify the dealer and the dealer may then immediately transfer the firearm to the purchaser ... .

Penal Code § 28220(f)(4). DOJ conspicuously fails to rely on subdivision (f)(4) in its argument to this Court.

And to the extent DOJ argues its interpretation is due any deference by the Court, *see* AOB at 46, no deference is appropriate given the plain language of Section 28220(f). *See, e.g.*, *S. Cal. Edison Co. v. Pub. Utilities Comm'n* (2000) 85 Cal.App.4th 1086, 1105 ("an agency's interpretation of a . . . statute does not control if an alternative reading is compelled by the plain language of the provision"); *Sustainability, Parks, Recycling & Wildlife Def. Fund v. Dep't of Res. Recycling & Recovery* (2019) 34 Cal.App.5th 676, 701 (no deference is due to an agency's interpretation "given the plain language of the statute"). Beyond that, the straightforward issues of statutory interpretation merit no deference. This case does not involve "scientific and technical . . . issues" where DOJ "has an interpretive advantage over the court." *Asociacion de Gente Unida por el Agua v. Cent. Valley Reg'l Water Quality Control Bd.* (2012) 210 Cal.App.4th 1255, 1268.

Finally, DOJ's arguments are contradicted by the legislative history at the time of Section 28220(f)'s adoption. Contemporaneous legislative committee analysis confirms that the purpose of the subdivision was to enable DOJ to delay firearm transactions in the specific circumstance where the agency could not ascertain the disposition of a potentially prohibiting criminal charge or mental health situation before the 10-day period elapsed.

For example, the Senate Public Safety Committee explained DOJ's "concern[s]" that prompted the statutory amendment:

> Because of the volume of [firearm] transactions, the Department of Justice is concerned about their ability to complete all necessary background checks within the 10-day waiting period, as required by current law. To address this issue, this bill would allow DOJ to take up to 30 days to complete the background check in those cases in which a preliminary record check shows that the purchaser has previously been taken into custody and placed in a facility for mental health treatment or evaluation or has been arrested for a crime and DOJ is unable to ascertain within the normal 10-day waiting period the final disposition of such an arrest or detention and whether the purchaser is prohibited from possessing, receiving, owning, or purchasing a firearm.

S. Comm. on Public Safety, Analysis of Assem. Bill 500 (2013-2014 Reg. Sess.), as amended May 24, 2013, p. 12. The remaining committee analyses explain the legislation's effect in the same terms. *E.g.*, S. Appropriations Comm., Analysis of Assem. Bill 500 (2013-2014 Reg. Sess.), as amended May 24, 2013, p. 1 (AB 500 would authorize DOJ "to delay firearms sales for up to 30 days if a record check indicates the buyer has been taken into custody for a mental health evaluation or charged with a crime but the final disposition cannot be ascertained within the 10-day waiting period."); S. Rules Comm., Analysis of Assem. Bill 500 (2013-2014 Reg. Sess.), as amended Sept. 3, 2013, p. 3 (AB 500 would require "that DOJ shall delay the transfer and immediately notify the dealer of that fact if specified records indicate that the purchaser has been placed in a mental health facility as specified, or arrested or charged with an offense that prohibits them from possessing a firearm.").[13] The legislative history provides no support for

[13] Respondents have filed a motion to take judicial notice of these committee reports pursuant to Evidence Code section 459. "To determine the purpose of legislation, a court may consult contemporary legislative

DOJ's claim that it has up to 30 days to process background checks if they have not been completed within 10 days for *different* reasons.

* * *

In short, DOJ is required to change the status of a "Pending" application to "Approved" immediately after the expiration of the 10-day waiting period absent a determination that the individual is prohibited by state or federal law from purchasing or possessing firearms. And DOJ may only extend this period if the background check performed within the first 10 days gives DOJ specific reason to believe that the purchaser may be prohibited or ineligible due to one of Section 28220(f)'s three enumerated circumstances. Nothing in Section 28220 provides DOJ authority or discretion to extend the period in which to conduct background checks because it may be short-staffed or for any other administrative purpose. Rather, the statute affirmatively requires that DOJ conduct and complete the background check in 10 days except where it encounters one of three enumerated types of potentially disqualifying information during the background cheek. The superior court correctly ruled that DOJ has no authority to extend that time when it hasn't provided adequate staffing to comply with the law.

B. DOJ's Unlawful Policy And Practice Of Delaying Firearm Transactions Beyond The 10-Day Waiting Period Is Not Excused By The COVID-19 Pandemic.

When it was sued, DOJ adopted a very different legal theory than the one it announced to the public in its Policy Statement. It now claims that processing all of the background checks within their respective 10-day periods would have been "impossible," so it should be saved by the "impossibility" canon of Civil Code § 3531. AA at 156; AOB at 50. DOJ

committee analyses of that legislation, which are subject to judicial notice." *In re J.W.* (2002) 29 Cal.4th 200, 211; Evid. Code § 452(c).

argues that, given the statute's direction to conduct background checks, the so-called "impossibility" to finish them within the waiting period works an *implied exception* to Section 28220 such that the courts should add a fourth basis (administrative burden) for extending background checks. AOB at 51.

The trial court succinctly explained why an implied exception cannot save DOJ here: DOJ has not claimed that it "knew [it was] required to comply with the 10-day period and only delay based on the three enumerated circumstances by section 28220(f), and yet could not do so due to impossible circumstances created by the pandemic. Instead, [DOJ] took the position that they have authority to wait more than 10 days to conduct the background checks whenever the Department determines more time is needed, and that they complied with the statute to the best of their ability under the circumstances." AA at 417. Indeed, the premise of an "impossibility" argument is that that the "impossibility" prevented the defendant from *complying* with the statute. *See Nat'l Shooting Sports Found., Inc. v. State* (2018) 5 Cal.5th 428, 433 ("Impossibility can occasionally excuse noncompliance with a statute, but in such circumstances, the excusal constitutes *an interpretation of the statute* in accordance with the Legislature's intent . . . .") (italics in original).

In any event, Section 28220's structure cannot support an implied exception based on administrative burden for the reasons set out above. The difficulties associated with the COVID-19 pandemic do not excuse DOJ from complying with Section 28220. In *Dep't of Developmental Servs.*, for example, the agency director responded to a potential budget shortfall by issuing "spending directives" that dictated specific cutbacks to services provided to disabled individuals. 38 Cal.3d at 390. Under the Lanterman Act, however, the DDS lacked authority to direct the regional centers' operations or control how they provided services. *Id.* at 389, 392. A unanimous California Supreme Court recognized that the regulator was in a "difficult

posture," but it could not avert its statutory obligations. *Id*. at 394–95. Rather than take the law into its own hands, the regulator could have "sought . . . relief from the Legislature." *Id*. at 395. Here, DOJ likewise sought no emergency authorization from the Legislature.[14]

DOJ cites *Lewis v. Super. Ct.* (1985) 175 Cal.App.3d 366 for the general proposition that "courts have found implied exceptions to statutory deadlines and obligations when necessary to effectuate the purpose of the statute." AOB at 51. In *Lewis*, the plaintiff's lawyer was hit by a car five days before the limitations period ran; he was in a coma for 10 days. *Id*. at 370. The court noted "ample precedent for judicial construction of implicit tolling exceptions in appropriate circumstances," *id*. at 372, and recognized its authority to adopt construe an exception that is consistent with the "manifest" legislative intent where compliance is truly impossible. *See id.* at 372–74. There, the Legislature had expressed that limitations period should be tolled "where [a plaintiff's] retained counsel has become, for virtually any reason, incapable of performing the professional responsibility of effectively representing the client's claim by timely commencing action." *Id*. at 376. Moreover, the court stressed that implied exceptions are determined on a case-by-case basis. *Id*. at 375.

Here, by contrast, DOJ is not asking for an implied exception to Section 28220 only in the instance of literal impossibility (as may be the case if a cyberterrorism attack disabled its computer system), nor is it willing to seek relief in the future on a case-by-case basis as circumstances arise.

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[14] California law provided another potential method for suspending laws based on emergencies like the COVID-19 pandemic. Governor Newsom relied on the Emergency Services Act, Gov. Code § 8550, *et seq*., to suspend many laws and impose emergency orders based on the exigencies associated with the pandemic. But the Governor did not suspend Penal Code section 28220, likely because it would have invited a wave of litigation over whether such delay violated the Second Amendment.

Rather, it has asserted statutory authority to extend the waiting period "up to 30 days" at its discretion in the event an "unpredictable situation" creates too much of an administrative burden. This is directly contrary to the Legislature's manifest intent as expressed in Section 28220 itself when it provided three—and only three—specific circumstances in which DOJ could delay background checks.

DOJ's impossibility argument also fails on appeal for the simple reason that the record does not support the contested fact as to whether it really was "impossible" for DOJ to complete the background checks. On this score, the Thompson declaration ultimately reveals that the so-called "impossibility" here was an "operational and staffing issue." AA at 171 (Thompson Decl., ¶ 39). Conspicuously missing from that declaration, however, is any explanation as to why DOJ didn't allow this unit to work remotely during Covid, when it allowed many others to do so. In fact, DOJ assured the world that it would make "temporary modification[s] of work arrangements" to "ensur[e] the continuity of critical departmental functions." Cal. Dep't of Justice, *Emergency Teleworking Policy – Coronavirus (COVID-19)* (March 16, 2020). DOJ didn't consider it a "critical departmental function" to deploy sufficient staff to process background checks within 10 days; DOJ claimed it didn't need to do that under Section 28220 because it had 30 days. Regardless, the superior court did not find that DOJ's showing established impossibility as a factual matter, and that was not clear error. *Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 800 (where a trial court's application of law to facts is "essentially factual" then its determination is reviewed under the "clearly erroneous standard").

It is worth emphasizing that if administrative burden is deemed sufficient to excuse DOJ's compliance with Section 28220, all agencies will be emboldened to leverage inevitable future emergencies to bend the rules in favor of bureaucratic ease. Indeed, despite calling Covid a "once-in-a-

lifetime" event, DOJ claims repeatedly that its administrative-burden impossibility theory must prevail in case it faces a future "emergency," "unpredictable situation," or other circumstance causing an "inability to conduct background checks within the 10-day waiting period." AOB at 12, 27, and 45. "Unpredictable situations" don't come along once in a lifetime. In short, DOJ simply wants flexibility that the law does not give it.

At bottom, DOJ's position runs counter to the principle that a state agency cannot "substitute its judgment" for the Legislature's by "administratively rewrit[ing]" a statute. *Plan. & Conservation League*, 55 Cal.App.4th at 490. DOJ is not permitted to cast aside statutory mandates to pursue its preferred policy: "A statute may impose on a government agency what first appears to be a technical formality, but such a requirement may serve to check delegations of power both to and by the agency . . . . Ignoring a statutory mandate nullifies the Legislature's valid purposes and results in tangible harm. If a statute requires an agency to dot its 'i's' and cross its 't's,' the Legislature's will must be done." *Marquez v. Med. Bd. of Cal.* (2010) 182 Cal.App.4th 548, 550–51.

DOJ's remaining authority confirms that Plaintiffs are on the right side of this case.

In *United States v. Olsen* (9th Cir. 2022) 21 F.4th 1036 (AOB at 50–51), the court reversed the district court's dismissal of an indictment for violating the Speedy Trial Act due to the suspension of jury trials during the pandemic. The Ninth Circuit held that the Speedy Trial Act's "ends of justice provision" permitted the district court to consider and balance the circumstances that caused the delay and grant a continuance even in the absence of "literal impossibility." *Id.* at 1044–47. Here, however, we are faced with very different circumstance, starting with the fact that DOJ can point to no similar "ends of justice" or other savings clause in the relevant statutory language. Moreover, DOJ implemented (and still defends as lawful)

a practice based on asserted authority under the statute to delay firearm transactions "up to 30 days"; the "impossibility" theory was thrown in as a backup once it was sued.

DOJ likewise cannot find solace in cases like *Sutro Heights Land Co. v. Merced Irr. Dist.* (1931) 211 Cal. 670, where the Supreme Court declined to issue a writ of mandate directing an irrigation district to comply with state drainage laws because the agency lacked sufficient financial resources to do so. *See* AOB at 51–52. For one thing, the Court in *Sutro Heights* noted that while the drainage district "ha[d] not succeeded in discharging [its statutory] duty to its fullest extent," the district "recognize[d] the duty imposed upon it" and "endeavor[ed] to comply" with the statute. *Id.* at 704. Here, by contrast, DOJ *disputes* that Section 28220 means what it says. Nor could DOJ claim that complying with the law would have brought "financial ruin" on the government, as the district claimed in *Sutro Heights*.

Furthermore, courts have rejected government agencies' claims that fiscal and administrative burdens excuse compliance with statutory duties under *Sutro Heights*. Indeed, it is worth noting that *National Shooting Sports*, 5 Cal.5th 428, *supra*, involved noncompliance with a statute by the *regulated* party, not the regulating party. In *King v. Martin* (1971) 21 Cal.App.3d 791, 796, for example, the court explained that *Sutro Heights* "did not intend . . . to establish a generally applicable excuse from the performance of mandatory official duty wherever fiscal difficulty is shown." *See also*, *e.g.*, *Prof. Engineers In Cal. Gov't v. State Pers. Bd.* (1980) 114 Cal.App.3d 101, 108 (quoting and following *King*). In such cases, the court's proper role is not to excuse an agency's failure to comply with the law, but to craft appropriate relief by "choos[ing] measures pointed toward assuring real compliance with official duties rather than rigidly to punish" the government. *King*, 21 Cal.App.3d at 796. To that end, it was appropriate for the trial court

to issue relief that confirmed DOJ's statutory obligations and ensured that those obligations are not flouted in the future.

The "impossibility" canon does not apply here.

C. Mandamus Is A Proper Remedy To Correct DOJ's Unlawful Acts.

DOJ next argues that the trial court erred in granting relief because Respondents failed to establish that the agency "ha[d] a policy of delay." AOB at 53–55; *see id.* at 53 (arguing that "there was no conspiracy or policy to delay background checks"). While the import of this argument is difficult to discern, there is no dispute that DOJ implemented a practice of delaying firearm transactions that defied the waiting period laws. This resulted in delaying over 220,000 firearm transactions beyond the 10-day period without DOJ complying with Section 28220(f). That practice was memorialized in the DOJ's Policy Statement claiming general authority to have "up to 30 days" to complete a background check.

This was unlawful: When a "governmental agency . . . acts outside of the scope of its statutory authority," it "acts ultra vires and the act is void." *Cal. Dui Lawyers Ass'n v. Cal. Dep't of Motor Vehicles* (2018) 20 Cal.App.5th 1247, 1264 (citation omitted). The trial court correctly relied on mandamus to remedy DOJ's failure to abide by its obligations under state law: Mandamus is appropriate "to correct an abuse of discretion or the actions of an administrative agency which exceed the agency's legal powers." *Saleeby v. State Bar* (1985) 39 Cal. 3d 547, 562 (emphasis omitted); *see also Asian Americans Advancing Justice-Los Angeles v. Padilla* (2019) 41 Cal.App.5th 850, 863 & n.11 (traditional mandamus was proper to challenge Secretary of State's interpretation of voting statute; "action that contravenes state law is, by definition, an abuse of discretion" justifying relief); *Transdyn/Cresci*, 72 Cal.App.4th at 752 (mandamus is appropriate to "correct" agency action that violates governing law); *Conlan v. Bonta* (2002)

102 Cal.App.4th 745, 752 (traditional mandamus is appropriate to challenge an agency's failure to act as required by state law). The court did not abuse its discretion by issuing a writ of mandate.

D. Declaratory Relief Was Appropriate To Address DOJ's Unlawful Policy And Practice Of Delaying Firearm Transactions.

DOJ's final argument claims that the trial court's ruling was "legally erroneous" because it granted declaratory relief in conjunction with writ relief. AOB at 56–58.[15] Not so.

It is well settled that "[t]he proper interpretation of a statute is a particularly appropriate subject for judicial resolution," and declaratory relief is available "when it is alleged an agency has a policy of ignoring or violating applicable laws." *Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1566. Such is the case here. "Because [declaratory relief] is a cumulative remedy . . . it is often sought . . . in conjunction with requests for injunctive relief or mandamus." *E. Bay Mun. Util. Dist. v. Dep't of Forestry & Fire Prot.* (1996) 43 Cal.App.4th 1113, 1121. As the California Supreme Court has explained, "[t]he mere circumstance that another remedy is available is an insufficient ground for refusing declaratory relief, and doubts regarding the propriety of an action for declaratory relief . . . generally are resolved in favor of granting relief." *Filarsky v. Super. Ct.* (2002) 28 Cal.4th 419, 433 (citing Code Civ. Proc. § 1062); *see also Californians for Native Salmon*, 221 Cal. App. 3d at 1429 ("a proper complaint for declaratory relief cannot be dismissed by the trial court because the plaintiff could have

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[15] DOJ also argues that the trial court abused its discretion because there was "no active controversy" to justify declaratory relief. AOB at 55–56. Respondents' have addressed this issue in depth in response to DOJ's mootness arguments.

filed another form of action").[16] Put another way, "[i]t is only where the court believes that *more* effective relief can and should be obtained by another procedure and that for that reason a declaration will not serve a useful purpose, that it is justified in refusing a declaration because of the availability of another remedy." *Jones v. Robertson* (1947) 79 Cal.App.2d 813, 820.

Moreover, the "[a]vailability of an alternative remedy, such as mandate in a future impasse [citation], is not generally a basis for denial of declaratory relief." *Steinberg*, 223 Cal.App.4th at 344; *accord Glendale City Employees' Ass'n, Inc. v. City of Glendale* (1975) 15 Cal.3d 328, 343 n.20 ("[t]he fact . . . 'that an action in declaratory relief lies . . . does not prevent the use of mandate'") (citation omitted).[17] Consistent with this authority, the trial court here entered a declaration that DOJ's policy and practice of delaying firearm transactions was unlawful and a writ of mandate directing DOJ to cease that practice in the future.

DOJ also relies on an inapplicable line of authority to argue that declaratory relief is generally inappropriate to review an agency's administrative decision. AOB at 57–58 (citing *State of California v. Super. Ct.* (1974) 12 Cal. 3d 237, 249 (challenge to permitting decision); *Tejon Real Est., LLC v. City of Los Angeles* (2014) 223 Cal.App.4th 149, 154–55 (challenge to city zoning regulation inappropriate because landowner failed to seek permit in administrative process); and *City of Pasadena v. Cohen*

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[16] DOJ cites *Griset v. Fair Pol. Practices Comm'n* (2001) 25 Cal.4th 688, 699–700, and *Cnty. of Del Norte v. City of Crescent City* (1999) 71 Cal.App.4th 965, 972, for the proposition that "[w]here a court's ruling on a petition for a writ of mandate resolves all allegations central to the petitioner's claims, that ruling necessarily resolves the petitioner's demands for declaratory or injunctive relief." AOB at 57. Neither case says so.

[17] Given this authority, DOJ's reliance on dicta in *City of Pasadena*, 228 Cal.App.4th at 1467 n.9, questioning whether traditional mandamus and declaratory relief could have been joined in that case, cannot control here. AOB at 58.

(2014) 228 Cal.App.4th 1461, 1466–67 (citing *State of California* and *Tejon* to state general rule in challenge to state agency's disapproval of city's redevelopment obligations)). This argument conflates traditional mandamus (which was sought here) with principles governing administrative mandamus (which have nothing to do with this case). And even in the administrative context, California courts recognize that "[t]here is nothing incompatible between administrative mandamus and declaratory relief" particularly in cases, like this one, where "declaratory relief is tailor-made" to resolve a dispute "centered . . . on a pure question of law." *Vedanta Soc. of S. Cal. v. Cal. Quartet, Ltd.* (2000) 84 Cal. App. 4th 517, 534; *see also Floresta, Inc. v. City Council of City of San Leandro* (1961) 190 Cal.App.2d 599, 612 (mandamus and declaratory relief actions properly joined where plaintiff "sought a review of the agencies' decision in its petition for a writ of mandamus and a test of the constitutionality of the ordinance in its request for declaratory relief"). Joining declaratory and writ relief was appropriate here to provide Respondents with complete relief.

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment.

Respectfully submitted,

Dated: June 7, 2023

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CERTIFICATE OF COMPLIANCE

Pursuant to rules 8.204(c)(1) of the California Rules of Court, I certify that the text of this brief consists of 13,770 words as counted by the Microsoft Word program used to generate the brief.

Dated: June 7, 2023

By: s/ Bradley A. Benbrook
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DECLARATION OF SERVICE

I am over the age of 18 and not a party to this cause. I am employed in the county where the mailing occurred. The following facts are within my first-hand and personal knowledge and if called as a witness, I could and would testify thereto. My business address is 701 University Avenue, Suite 106, Sacramento, CA 95825. On June 7, 2023, I served the foregoing documents entitled:

1. Respondents' Brief
2. Motion for Judicial Notice

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One copy of Respondents' Brief (California Rule of Court 8.212(c)(1))

I declare under penalty of perjury under the laws of the State of California and of the United States that the foregoing is true and correct.

Executed on June 7, 2023.

s/*Stephen M. Duvernay*
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